

1 Darrah - Highly Confidential - Trade Secret  
2

A F T E R N O O N      S E S S I O N

3                          2:15 p.m.  
4

5                          THE VIDEO OPERATOR: We're back on  
6 the record. The time on the screen is 2:12:57.

7                          S T E P H E N C. D A R R A H,  
8 resumed, having been previously duly sworn, was  
9 examined and testified further as follows:

10                         CONTINUED EXAMINATION

02:12:58 11                         BY MR. PAYTON:

02:13:00 12                         Q.        Mr. Darrah, do you know a  
02:13:02 13                         Mr. Knudson, with a K?

02:13:06 14                         A.        Don Knudson?

15                         Q.        Yes.

02:13:08 16                         A.        Yes, I do.

02:13:08 17                         Q.        Did he work for you?

02:13:12 18                         A.        At one time he worked in my  
02:13:14 19                         organization.

02:13:14 20                         Q.        What did he do?

02:13:18 21                         A.        He was the plant manager of the  
02:13:22 22                         Bermuda Hundred facility at one time. The second  
02:13:24 23                         time he worked in my organization, he was the  
02:13:26 24                         director of quality assurance. Excuse me. He  
02:13:32 25                         was the director of quality assurance and

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2 manufacturing services.

02:13:34 2  
02:13:58 3 Q. We were discussing the solubles that  
02:14:02 4 are extracted from -- I think you called it the  
02:14:04 5 basic raw material, I called it the dry raw  
02:14:06 6 material. Do you remember this?

02:14:06 7 A. Yes.

02:14:10 8 Q. And in the one document I showed you,  
02:14:12 9 there was a reference to the SEL, the strong  
02:14:16 10 extracted liquor, being a tobacco extract. Do  
02:14:18 11 you recall that? You saw that?

02:14:20 12 A. Yes, I saw that, but I think I made a  
02:14:24 13 point about tobacco extract, and I didn't really  
:14:26 14 agree that that was a tobacco extract, the  
02:14:30 15 extracted solubles being tobacco extract.

02:14:30 16 Q. I understand. You personally didn't  
02:14:32 17 agree with that.

02:14:32 18 A. That's correct.

02:14:34 19 Q. The document you saw did refer to it  
02:14:38 20 as a tobacco extract, the SEL.

02:14:38 21 A. I believe it did.

02:14:40 22 Q. And it was a reference to a material  
02:14:40 23 safety data sheet?

02:14:42 24 A. That's correct.

02:14:44 25 Q. Have you ever seen a Philip Morris

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2 02:14:50 material safety data sheet that refers to or is a  
3 02:14:54 material safety data sheet for tobacco extract?

4 02:14:58 A. Not to my knowledge, Mr. Payton.

5 5 (Darrah Exhibit 7 for  
6 identification, Philip Morris U.S.A. material  
7 safety data sheet for processed tobacco extract.)

8 02:15:50 Q. Mr. Darrah, you've just been handed  
9 02:15:56 what's been marked Darrah 7, which is a Philip  
10 02:16:02 Morris U.S.A. material safety data sheet for  
11 02:16:04 processed tobacco extract. Production number PA  
12 02:16:14 414191 through 97, 2030542024 through 2030.

13 02:16:16 Have you seen material safety data  
14 02:16:18 sheets before?

15 02:16:22 A. I have seen an example, an  
16 02:16:24 administrative example of a material safety data  
17 02:16:24 sheet.

18 02:16:28 Q. You recognize this as a material  
19 02:16:30 safety data sheet?

20 02:16:30 A. Mm-hmm.

21 02:16:32 MR. NUNLEY: Not this one  
22 02:16:32 particularly, but this form?

23 02:16:34 MR. PAYTON: Yes, just this form.

24 02:16:36 A. The general format, yes.

25 02:16:38 Q. And as I just read off, this is the

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2:16:40 2 material safety data sheet, the Philip Morris  
02:16:44 3 material safety data sheet, that is for processed  
02:16:48 4 tobacco extract. Do you see that on the first  
02:16:48 5 page?

02:16:48 6         A. Yes, I do.

02:16:52 7         Q. And do you see that there is actually  
02:16:56 8 an MSDS number on the first page at the top? Do  
02:17:00 9 you see it says, number 05242?

02:17:00 10        A. Yes, I do.

02:17:04 11        Q. And if you look back onto Darrah  
02:17:08 12 Exhibit Number -- I do not recall the exhibit  
02:17:10 13 number -- 6, which is the procedure for  
02:17:12 14 collecting SEL samples.

02:17:14 15        A. Mm-hmm.

02:17:16 16        Q. And under "Safety precautions"  
02:17:16 17 there's a reference to the material safety data  
02:17:20 18 sheet on processed tobacco extract, and it refers  
02:17:24 19 to MSDS number 05242. Do you see that?

02:17:26 20        A. Yes, I do.

02:17:26 21        Q. So this is the material safety data  
02:17:30 22 sheet relating to processed tobacco extract  
02:17:32 23 that's being referred to in Darrah Exhibit 6?

02:17:34 24        MR. NUNLEY: Well, the documents  
02:17:36 25 speak for themselves, Mr. Payton. Either they

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2 are or they're not.

3 02:17:38 Q. It's the same numbers, do you see  
4 02:17:40 that, Mr. Darrah?

5 02:17:42 A. Yes, I do.

6 02:17:52 Q. And if you want to take a look  
7 02:17:56 through this document, acquaint yourself with  
8 02:18:00 it.

9 02:18:04 (Witness complies.)

10 02:18:48 MR. NUNLEY: Mr. Darrah, I might  
11 02:18:52 direct to you Roman numeral VIII, and Roman  
12 02:18:54 numeral XI.

13 02:19:14 THE WITNESS: Okay.

14 :19:18 Q. Do you agree with me that SEL is  
15 02:19:22 classified as a processed tobacco extract in this  
16 02:19:22 material safety data sheet?

17 02:19:28 A. I don't see SEL mentioned in the data  
18 02:19:34 sheet. I may have missed it, but strong  
19 02:19:36 extracted liquor, I did not see that term in  
20 02:19:36 there.

21 02:19:40 Q. Darrah 6, it refers to SEL in  
22 02:19:42 reference to the material safety data sheet.  
23 02:19:48 You're right. I did it backwards. Darrah 6,  
24 02:19:58 which is the procedure for collection of SEL  
25 02:20:00 samples, you see under "Safety precautions," it

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2 refers to SEL as a tobacco extract.

02:20:00 3 A. Right.

02:20:02 4 Q. And references immediately prior to  
02:20:04 5 that the material safety data sheet, 05242.

02:20:06 6 A. Right.

02:20:32 7 MR. NUNLEY: Mr. Payton, when you're  
02:20:34 8 finished with that, I have a comment for the  
02:20:36 9 record, but I don't want to make it until you're  
02:20:38 10 finished.

02:20:40 11 MR. PAYTON: What do you mean, you  
02:20:40 12 have a comment for the record?

02:20:42 13 MR. NUNLEY: Just what I said.

:20:42 14 MR. PAYTON: Go ahead.

02:20:44 15 MR. NUNLEY: Thank you. I direct the  
02:20:48 16 record Roman numeral VIII and Roman numeral XI.  
02:20:48 17 It would suggest --

02:20:50 18 MR. PAYTON: Wait a minute. Don't do  
02:20:54 19 that, Chip. Don't do that. Don't say what your  
02:20:56 20 understanding of the document is.

02:20:56 21 MR. NUNLEY: Well, John, you have  
02:21:00 22 suggested that the use in Darrah Number 6 was  
02:21:08 23 intended to apply MSDS 05242 to SEL. Looking at  
02:21:18 24 05242, it would not appear to apply to SEL. It  
02:21:20 25 says, "Tobacco extract is not stored or processed

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02:21:24 2       in bulk," and that "PM does not manufacture  
02:21:24 3       tobacco extract."

02:21:48 4           Q.     Mr. Darrah, taking a look at Darrah  
02:21:50 5       6, which is the procedure for collecting SEL  
02:21:52 6       samples, under "Safety precautions," the same two  
02:21:56 7       sentences we've been looking at, do you see the  
02:21:58 8       second sentence that says "SEL is a tobacco  
02:21:58 9       extract"?

02:22:00 10          A.     Yes, I do.

02:22:10 11          Q.     Do you have any basis for questioning  
02:22:12 12       that characterization of SEL as a tobacco  
02:22:14 13       extract?

02:22:16 14          A.     Yes, I do.

02:22:18 15          Q.     What?

02:22:22 16          A.     Simply that SEL is an extracted  
02:22:28 17       liquid from a process at Park 500, and I don't  
02:22:32 18       know if "tobacco extract" as nouns and  
02:22:36 19       adjectives, Mr. Payton, properly describes what  
02:22:38 20       SEL is.

02:22:48 21          Q.     What about CEL? That's concentrated  
02:22:48 22       extracted liquor?

02:22:50 23          A.     Yes, I believe it is.

02:22:52 24          Q.     Is that a tobacco extract?

02:22:54 25          A..    I would have to reply in exactly the

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:22:56 2 same way I did for SEL.

02:22:58 3 Q.     Is that a no?

02:23:00 4 A.     As I said, I would have to say the

02:23:02 5 same thing as I said for SEL, that I don't

02:23:02 6 believe it is.

02:23:04 7 Q.     And DNCEL, that's denitrated

02:23:06 8 concentrated extracted liquor?

02:23:06 9 A.     Yes.

02:23:10 10 Q.     Is that a tobacco extract?

02:23:14 11 A.     Not to my definition, it wouldn't

02:23:14 12 be.

02:23:16 13 Q.     I thought you told me earlier that

:23:16 14 you weren't sure what the term "tobacco extract"

02:23:18 15 referred to.

02:23:18 16 A.     That's correct. I said that I was

02:23:20 17 not sure what the definition was.

02:23:22 18 Q.     Okay. And if you're not sure what

02:23:24 19 the definition is, how can you say with such

02:23:30 20 certainty that SEL, CEL, and DNCEL are not

02:23:30 21 tobacco extracts?

02:23:34 22 A.     Well, there's a piece of data here

02:23:36 23 that's been given to me that says basically on --

02:23:40 24 to your line of questioning, that SEL is tobacco

02:23:40 25 extract, that it says here, for example, in

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2 :23:46 number 8, it occurs as a waste by-product where  
3 02:23:46 tobacco is processed.

4 02:23:48 Well, SEL is is not a waste  
5 02:23:52 by-product. It's a generated part of the process  
6 02:23:54 at Park 500. "Waste by-product" says to me that  
7 02:23:56 is something that occurs that is wasted and  
8 02:23:58 tossed out.

9 02:23:58 Q. Okay.

10 02:24:00 A. The other point I was just going to  
11 02:24:02 mention here also is that it says, "PM does not  
12 02:24:06 manufacture tobacco extract." This is in number  
13 02:24:08 item 11 in my Exhibit Number 7.

14 :24:08 Q. Yes.

15 02:24:12 A. "It is a by-product." And that's my  
16 02:24:14 understanding, that we do not manufacture tobacco  
17 02:24:14 extract.

18 02:24:16 Q. Okay.

19 02:24:18 A. I'm not sure -- it, ■ says it is a  
20 02:24:20 by-product, I'm not sure -- by-product of what?  
21 02:24:22 This doesn't say what it's a by-product of.

22 02:24:24 Q. Okay.

23 02:24:28 A. My reasoning, to your question, was I  
24 02:24:30 don't know what the definition of "tobacco  
25 02:24:32 extract" is relative to the process at Park 500.

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02:24:36 2 What I consider it not to be is part of something  
02:24:38 3 that is generated within that process, such as  
02:24:40 4 SEL, DNCEL or CEL.

02:24:44 5 Those represent not waste by-product  
02:24:46 6 streams, but they represent streams that are  
02:24:48 7 generated within the process by design for  
02:24:50 8 utilization within that process.

02:24:52 9 Q. And there's no reason to believe that  
02:24:56 10 a tobacco extract could not be generated inside  
02:24:56 11 the process to be used inside the process, is  
02:24:58 12 there?

02:24:58 13 MR. NUNLEY: Objection as to form.

02:25:04 14 A. Let me just say that -- I don't know  
02:25:06 15 if I'm answering your question directly or not.

02:25:08 16 I have never considered that Park 500  
02:25:10 17 at any time that I worked there, between 1974 and  
02:25:16 18 approximately 1977, '78, or during my tenure over  
02:25:18 19 in the United States as director, vice president,  
02:25:22 20 rather, of manufacturing and production, that we  
02:25:26 21 generated, for utilization or otherwise, a  
02:25:28 22 tobacco extract from the RL process.

02:25:30 23 Q. Do you understand that the term  
02:25:34 24 "tobacco extract" could be a generic term,  
02:25:36 25 simply describing substances that are extracted

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02:25:38 2 from tobacco?

02:25:42 3 A. If that's what the definition is,  
02:25:44 4 then I would have to say either I agree or I  
02:25:46 5 disagree with it. I don't understand it to be a  
02:25:50 6 generic term per se because I've never heard it  
02:25:50 7 used as a generic term.

02:25:54 8 Q. Well, it's certainly used in Darrah 6  
02:25:56 9 when it says SEL is a tobacco extract in that  
02:25:56 10 way, isn't it?

02:25:58 11 A. Yes, but I think I also mentioned to  
02:26:00 12 you I have not seen Darrah 6.

02:26:02 13 Q. You haven't seen either one of these  
02:26:02 14 documents.

02:26:04 15 A. Exactly right.

02:26:04 16 Q. I understand. I'm just asking you to  
02:26:06 17 look at these documents and see if we can figure  
02:26:08 18 out what they mean.

02:26:08 19 MR. NUNLEY: Well, John, the  
02:26:10 20 documents speak for themselves.

02:26:10 21 MR. PAYTON: Obviously they don't.

02:26:12 22 MR. NUNLEY: Excuse me. You're  
02:26:14 23 asking him to look behind the document and tell  
02:26:18 24 you what the author had in his or her mind at the  
02:26:20 25 time they were written.

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02:26:20 2 Q. You had no prior, prior to seeing  
02:26:22 3 these two documents, understanding as to the  
02:26:24 4 definition of "tobacco extract," is that right?

02:26:26 5 A. That's correct.

02:26:30 6 Q. Go back to Darrah Exhibit 5,  
02:26:34 7 which I believe is the RL process overview. Am I  
02:26:34 8 correct?

02:26:36 9 MR. NUNLEY: The one, for the record,  
02:26:36 10 he's never seen before.

02:26:38 11 MR. PAYTON: That's correct.

02:26:40 12 Q. Am I right, is that Darrah 5?

02:26:40 13 A. Yes, it is.

02:27:10 14 Q. I asked you this morning if you knew  
02:27:14 15 what size was, and I think you gave me an answer  
02:27:16 16 to that. Do you know what the size batch prep  
02:27:18 17 operation is in the RL process?

02:27:20 18 A. Yes, I remember what that was.

02:27:20 19 Q. What is it?

02:27:24 20 A. That's where, if I'm not mistaken, we  
02:27:30 21 used to take the DNCEL, denitrated concentrated  
02:27:34 22 extracted liquor, and through the addition of  
02:27:38 23 other materials, flavors and so forth, prepare  
02:27:42 24 that for reapplication to the base web.

02:27:50 25 Q. Would you go to page 114 in this

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02:27:52 2 document, and I'm talking about the page numbers  
02:27:56 3 that are internal to the document itself.

02:27:58 4 A. That was 114?

02:28:00 5 Q. Yes. And as you go through, you will  
02:28:02 6 see that every page is not numbered. You have to  
02:28:04 7 keep going until you get the next numbered page.  
02:28:10 8 It is about two-thirds of the way through.

02:28:12 9 A. I have it.

02:28:14 10 Q. It says at the top, "Size batch prep  
02:28:20 11 operation, sequence in the process flow." Do you  
02:28:22 12 see that?

02:28:22 13 A. Mm-hmm.

02:28:22 14 Q. It says, "The following will show the  
02:28:26 15 customer/supplier relationship to the size batch  
02:28:30 16 prep operation. The size batch prep operation is  
02:28:32 17 one stage in the process where flavors and  
02:28:36 18 tobacco extracts are mixed and sampled to ensure  
02:28:40 19 proper composition. Then they are stored and  
02:28:42 20 supplied when needed for applying to the base web  
02:28:44 21 sheet."

02:28:44 22 Do you see that?

02:28:46 23 A. Yes, I do.

02:28:46 24 Q. Do you understand that reference to  
02:28:52 25 tobacco extracts to be referring to DNCEL?

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02:28:54 2 A. As it is written here, yes, I do.

02:29:02 3 Q. Are you sure that you do not recall

02:29:08 4 DNCEL or SEL or CEL being referred to as tobacco

02:29:10 5 extracts before today?

02:29:14 6 A. I have not heard of those terms

02:29:16 7 representing a part of the process at Park 500 as

02:29:18 8 being referred to as tobacco extract.

02:29:52 9 Q. In the description you gave me just a

02:29:56 10 few minutes ago about how the size went onto the

02:30:02 11 sheet, I think you used the term "reapplied." Do

02:30:02 12 you recall that?

02:30:06 13 A. "Reapplied"?

02:30:08 14 Q. Yes.

02:30:10 15 A. Yes, I think I did use that term.

02:30:16 16 Q. Let's go back to what's been marked

02:30:22 17 as Darrah Exhibit -- whatever this is.

02:30:24 18 MR. BROWN: That's number 2.

02:30:30 19 Q. Yes, this is the February 25, 1992,

02:30:36 20 and if you go to the third page where your

02:30:36 21 signature is there, Mr. Darrah.

02:30:38 22 A. Mm-hmm.

02:30:40 23 Q. The short description of the RL

02:30:46 24 process that is in the section that says "Nature

02:30:48 25 of business."

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02:30:48 2 A. Yes.

02:30:56 3 Q. That section describes this part of  
02:30:58 4 the process in the last, next to last sentence, I  
02:31:00 5 believe. It says, "The extracted solubles are  
02:31:04 6 cleaned, processed, concentrated by evaporation,  
02:31:08 7 and applied onto the tobacco sheet."

02:31:08 8 Do you see that?

02:31:10 9 A. Yes, I do.

02:31:28 10 Q. Is this language I just read the more  
02:31:30 11 accurate description?

02:31:30 12 MR. NUNLEY: More accurate than what,  
02:31:32 13 John?

02:31:32 14 MR. PAYTON: "Reapplied."

02:31:34 15 MR. NUNLEY: As between "applied" and  
02:31:34 16 "reapplied"?

02:31:36 17 MR. PAYTON: That's right.

02:31:40 18 A. Well, I think we're talking about a  
02:31:44 19 nuance in the language on this. I have a certain  
02:31:46 20 problem not so much with the verb "applied" as  
02:31:48 21 "reapplied" that's in here, because what they're  
02:31:50 22 assuming is that something has already been  
02:31:52 23 removed.

02:31:54 24 When I say "reapplied," I'm including  
02:31:56 25 the process of removing and reapplying. Removal

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02:32:00 2         of concentration, mixing of additives and  
02:32:06 3         flavors, and reapplying. Now, here, what it  
02:32:06 4         basically says is the clean, processed  
02:32:12 5         concentrate -- just the extracted solubles are  
02:32:16 6         cleaned, processed, concentrated, applied to the  
02:32:18 7         tobacco sheet.

02:32:20 8                   I think it's semantic to say  
02:32:22 9         "applied" versus "reapplied." I'm including  
02:32:24 10         everything that occurs before the word "applied"  
02:32:26 11         in here when I say "reapplied." Secondly, I have  
02:32:28 12         a problem about "tobacco sheet" on here. I  
02:32:28 13         question whether that's the accurate description  
02:32:32 14         of the way I understood the process.

02:32:34 15                   If that said "base web," "applied  
02:32:38 16         to," "reapplied to the base web," I would say  
02:32:40 17         that would be a more accurate description than  
02:32:40 18         "tobacco sheet."

02:32:44 19                 Q.     Has your understanding changed over  
02:32:46 20         time, or has that always been your understanding?

02:32:48 21                 A.     That's always been my understanding,  
02:32:50 22         Mr. Payton. The terminology we used at Park 500  
02:32:54 23         is that the base web was what came off the Yankee  
02:32:56 24         dryer, would go throughout tunnel dryers, to the  
02:33:00 25         size press. At the size application point, then

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2 02:33:02 2 that became the tobacco sheet.

3 02:33:04 3 That was the finished product that

4 02:33:08 4 was dried, converted into something that went

5 02:33:10 5 into a hogshead or a case.

6 02:33:32 6 Q. Well, you've heard of the base web

7 02:33:34 7 referred to as a tobacco sheet before, haven't

8 02:33:34 8 you?

9 02:33:36 9 A. No, I haven't. As a matter of fact I

10 02:33:38 10 never heard of the base web referred to as a

11 02:33:40 11 tobacco sheet. I've heard it always referred to

12 02:33:40 12 as base web.

13 02:33:42 13 The terminology "tobacco sheet" has

14 02:33:44 14 always been, at least in my experience from

15 02:33:46 15 working there and any discussions that we had

16 02:33:48 16 that I can remember down there, was that the

17 02:33:50 17 finished sheet or tobacco sheet had the

18 02:33:54 18 connotation of what happened from the size press

19 02:33:58 19 downstream, not size press upstream.

20 02:34:00 20 Q. How did you come to sign this

21 02:34:04 21 description that uses the term "tobacco sheet" in

22 02:34:06 22 this document that you signed after personal

23 02:34:10 23 inquiry and under penalty of perjury?

24 02:34:10 24 A. Well, let me just say --

25 02:34:12 25 MR. NUNLEY: Well, John -- stop a

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| 2 minute. Are you suggesting -- I take offense at  
02:34:14 2 this. This gentleman has come over here, you  
02:34:16 3 haven't had to go to London to get him, and now  
02:34:18 4 you're accusing him of perjury based on an  
02:34:22 5 effluent permit that has as a part of it a casual  
02:34:26 6 description of the process.  
02:34:28 7

02:34:32 8 You know as well as I do the purpose  
02:34:34 9 of this is to describe the effluent. Now, you  
02:34:42 10 showed this witness a document that dated --  
02:34:42 11 predated his signature, that had the same  
02:34:42 12 description of the process.

02:34:44 13 MR. PAYTON: I did. I did, exactly.  
02:34:46 14 I did. That was signed by the senior vice  
02:34:48 15 president for manufacturing of Philip Morris. It  
02:34:50 16 had the same description.

02:34:52 17 MR. NUNLEY: And I think you would  
02:34:54 18 agree that that description is secondary to the  
02:34:56 19 purpose of this document.

02:35:04 20 Q. On the form where your signature  
02:35:06 21 appears --

02:35:08 22 A. We're on Exhibit Number 2 still?

02:35:16 23 Q. Yes. There are two pages of form  
02:35:18 24 that precede your signature, and this is the only  
02:35:22 25 typed description. Is that correct, Mr. Darrah?

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1 Darrah - Highly Confidential - Trade Secret

02:35:32 2 A. I believe it's the only typed  
02:35:36 3 description of the manufacturing process. There  
02:35:38 4 is a typed description of the wastewater  
02:35:38 5 treatment process.

02:35:40 6 Q. And that is in a next part of the  
02:35:42 7 form. I said in the two pages that precede your  
02:35:44 8 signature.

02:35:44 9 A. Yes, that is correct.

02:35:46 10 Q. And then there's another description,  
02:35:50 11 and you signed that on another signature page.

02:35:50 12 A. That is correct.

02:35:56 13 Q. And, Mr. Darrah, I am not accusing  
02:36:00 14 you of perjury. I'm simply asking what your  
02:36:02 15 explanation is for this. When I showed this to  
02:36:04 16 you this morning, I showed you the whole  
02:36:06 17 document. I read off the entire section. I  
02:36:08 18 asked you if this was a fair description of the  
02:36:10 19 RL process, and I believe you said it was.

02:36:12 20 MR. NUNLEY: He said, John, if you  
02:36:14 21 had five lines to answer with.

02:36:14 22 MR. PAYTON: That's what he said.  
02:36:14 23 That's correct.

02:36:16 24 Q. Right? You said given the number of  
02:36:20 25 lines, this was a --

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1 Darrah - Highly Confidential - Trade Secret

02:36:22 2 A. Good job, I think was the terminology  
02:36:22 3 I used to describe the RL process.

02:36:24 4 Q. That's right. And I showed that all  
02:36:24 5 to you.

02:36:24 6 A. Right.

02:36:26 7 Q. I asked you about that, and that was  
02:36:30 8 your answer. And I'm now asking why you didn't  
02:36:32 9 make any note at all of tobacco sheet in there,  
02:36:36 10 if you say you had never seen that term used that  
02:36:36 11 way before.

02:36:38 12 A. Well, basically because now we're  
02:36:42 13 talking about tobacco extracts, solubles, size  
02:36:44 14 prep makeup and so forth.

02:36:44 15 And in looking at this description on  
02:36:46 16 this, I want to make it very, very clear to you  
02:36:48 17 during this questioning that the interpretation  
02:36:52 18 of this as I'm reading it now, and I think that  
02:36:54 19 you brought out the concentration on the next to  
02:36:56 20 last line, "extracted solubles" at the beginning  
02:36:58 21 of the sentence and "sheet" at the end of it, I  
02:37:00 22 read that a couple of times to make sure if  
02:37:04 23 Mr. Payton understands very clearly if I agree  
02:37:06 24 with it or did I agree with it.

02:37:06 25 The point I'm making is I disagree

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1                   Darrah - Highly Confidential - Trade Secret  
02:37:10 2       with the "tobacco sheet" nomenclature for a  
02:37:14 3       process description as a point in the process. I  
02:37:16 4       have no problem with a generic description of  
02:37:16 5       this type in a five-line description.

02:38:00 6       Q.      I want to go back to page 60. I'm  
02:38:02 7       sorry, I'm simply not going to remember the  
02:38:06 8       exhibit number, but in the RL process overview.

02:38:08 9       A.     That was page 60?

02:38:10 10      Q.     Yes, 60.

02:38:16 11      (Witness complies.)

02:38:28 12      Q.     It's headed "The evaporation system,  
02:38:32 13       sequence in the process flow." Do you see that?

02:38:32 14      A.     Yes, I do.

02:38:34 15      Q.     This is a section that's talking  
02:38:36 16       about SEL. Do you see that "The SEL strong  
02:38:40 17       extracted liquor that was extracted in the press  
02:38:42 18       section continues through the liquor cleanup  
02:38:46 19       system and is pumped to the evaporators to be  
02:38:48 20       concentrated in preparation of being applied to  
02:38:52 21       the tobacco sheet in the machine room"?

02:38:54 22       Do you see that?

02:38:54 23      A.     Mm-hmm.

02:38:56 24      Q.     I take it that terminology is new to  
02:38:58 25       you as well, the use of "tobacco sheet" right

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1 Darrah - Highly Confidential - Trade Secret

6:38:58 2 there?

02:39:02 3 A. Well, first of all, I have not seen  
02:39:04 4 this document before.

02:39:04 5 Q. I understand that.

02:39:08 6 A. I would have the same observation, if  
02:39:10 7 I may, with the terminology that was used here,  
02:39:14 8 to describe this part of the reapplication or  
02:39:20 9 application of size to tobacco sheet versus base  
02:39:20 10 web.

02:39:26 11 Q. Are you sure the terms aren't used  
02:39:26 12 interchangeably?

02:39:28 13 MR. NUNLEY: Asked and answered.

6:39:30 14 A. I don't know.

02:39:40 15 Q. Have you seen the term "sheet of  
02:39:42 16 tobacco" used to refer to what is being referred  
02:39:44 17 to as the tobacco sheet here?

02:39:50 18 A. Mr. Payton, I don't know. "Sheet of  
02:39:54 19 tobacco" -- I mean, I may have read that, I may  
02:39:56 20 not have read that at some point in time. I do  
02:40:00 21 not recall reading that in any documentation that  
02:40:02 22 describes the RL process.

02:40:16 23 Q. How about a reference, a term that is  
02:40:18 24 "a web of tobacco sheet"? Have you seen that in  
02:40:20 25 terms of the RL process?

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1 Darrah - Highly Confidential - Trade Secret

2 02:40:22 2 A. Not to my knowledge, no.

3 02:40:42 3 Q. Do you know who would have prepared  
4 02:40:48 4 this application that has your signature in  
5 02:40:50 5 Darrah Exhibit 2?

6 02:40:54 6 A. Let me say that -- and I think I  
7 02:40:56 7 mentioned, I don't know who Ethel G. Tatum is. I  
8 02:41:00 8 think we talked about Joe Tenhet as an  
9 02:41:04 9 individual. And if I'm not mistaken, Mr. Tenhet  
10 02:41:06 10 from time to time would come to my office with  
11 02:41:10 11 one of these particular permit requirements and  
12 02:41:10 12 so forth.

13 02:41:16 13 So I'm surmising it would be within  
14 02:41:18 14 that particular department of environmental  
15 02:41:22 15 permitting and conformance application and so  
16 02:41:22 16 forth that we had.

17 02:41:34 17 Q. So Mr. Tenhet is a knowledgeable  
18 02:41:34 18 person as far as how the RL process worked?

19 02:41:36 19 A. I can't give you an opinion on that.

20 02:42:30 20 Q. Are you familiar with the Fourdrinier  
21 02:42:32 21 section in the RL process?

22 02:42:34 22 A. Yes, I am.

23 02:42:38 23 Q. Do you want to turn to page 99?

24 02:42:40 24 MR. NUNLEY: Mr. Darrah, by that, you  
25 02:42:42 25 mean not this specific document, but the process

MANHATTAN REPORTING CORP.

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1 Darrah - Highly Confidential - Trade Secret

2 02:42:42 itself?

3 02:42:44 THE WITNESS: Yes, that's correct.

4 02:42:46 MR. PAYTON: That's what I meant.

5 02:42:46 MR. NUNLEY: But you're making  
6 02:42:48 reference to a document.

7 02:42:54 Q. This is the section of the document  
8 02:43:00 that -- actually go back one page, you'll see  
9 02:43:06 that it begins the section, on the Fourdrinier  
10 02:43:08 section. If you go back to 98, that's just the  
11 02:43:10 first page of text on the Fourdrinier section.

12 02:43:12 Actually on page 98, which says  
13 02:43:14 "Fourdrinier section, sequence in the process  
14 02:43:16 flow," if you look at the second line you'll see  
15 02:43:18 a reference to a web of tobacco sheet. Do you  
16 02:43:18 see that?

17 02:43:26 A. Excuse me. What page am I on?

18 02:43:26 Q. That's 98.

19 02:43:32 A. 98. Yes.

20 02:43:36 Q. And that's a reference to what you  
21 02:43:38 were referring to as the base web?

22 02:43:40 A. No. It's not.

23 02:43:40 Q. What is this?

24 02:43:44 A. This is a slurry. I mean, I'm giving  
25 02:43:46 you my interpretation. This is a slurry, a very

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.43:56 2 high moisture content, watery substance with some  
02:43:58 3 fiber in it that is placed for dewatering at the  
02:44:00 4 end of a moving screen.

02:44:02 5 When I'm talking about the base web,  
02:44:04 6 the base web, to my definition, what my  
02:44:06 7 understanding was as to how it was utilized is  
02:44:10 8 what comes off the Yankee dryer, passes through  
02:44:12 9 the tunnel dryers before it arrives at the size  
02:44:14 10 press.

02:44:18 11 Q. And the Fourdrinier section is before  
02:44:20 12 that stage in the process you just described; is  
02:44:20 13 that correct?

:44:20 14 A. That's correct.

02:44:26 15 Q. So this reference here on page 98,  
02:44:30 16 the Fourdrinier section, is the place in the  
02:44:32 17 process where stock is transformed from an  
02:44:36 18 aqueous suspension to a web of tobacco sheet.  
02:44:40 19 You believe that's referring to something that is  
02:44:46 20 still wet, is what I would say; is that --

02:44:48 21 A. Yes, it's very wet. That's correct.

02:44:50 22 Q. It's very wet. But it's formed in  
02:44:54 23 some sort of sheet, as the fibers have gone  
02:44:56 24 through the paper making process; isn't that  
02:44:56 25 right?

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1 Darrah - Highly Confidential - Trade Secret

6 .44:58 2 A. Well, the fibers are starting to go  
02:45:00 3 through the paper making process.

02:45:00 4 Q. Okay.

02:45:02 5 A. The --

02:45:04 6 MR. NUNLEY: Is that a question?  
02:45:10 7 When he says "okay, okay," he's not posing a  
02:45:10 8 question.

02:45:12 9 Q. I'll take your description. The  
02:45:12 10 fibers are starting to go through the paper  
02:45:12 11 making process.

02:45:14 12 A. They're starting to be transformed  
02:45:16 13 into the paper making process of forming the base  
02:45:16 14 web.

02:45:22 15 Q. And this reference here, "transformed  
02:45:26 16 from an aqueous suspension to a web of tobacco  
02:45:28 17 sheet," do you see that?

02:45:28 18 A. Yes.

02:45:30 19 Q. You said that is not what you're  
02:45:32 20 referring to as the base web.

02:45:34 21 A. No, that's correct. I don't think  
02:45:36 22 the term "base web" is used here.

02:45:40 23 Q. So is it the case that the web of  
02:45:42 24 tobacco sheet is the term that applies at this  
02:45:46 25 stage in the process, before we get to what

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1 Darrah - Highly Confidential - Trade Secret

2 02:45:48 2 you're referring to as the base web?

3 02:45:50 3 A. Again, it's conjecture on my part to  
4 02:45:52 4 say what the author intended to mean here,  
5 02:45:54 5 Mr. Payton. You and I are going back and forth  
6 02:45:58 6 on this thing. Let me try and be as concise as I  
7 02:45:58 7 can about it.

8 02:46:00 8 When I talk about tobacco sheet, that  
9 02:46:02 9 is a finished product that's ready to go to a  
10 02:46:08 10 customer. That's where we have it packed out and  
11 02:46:10 11 we now have a tobacco sheet ready to be shipped  
12 02:46:14 12 to a customer, internally, externally, whatever.

13 02:46:16 13 The base web, as I described before,  
14 02:46:18 14 is not a product for a customer. It has not been  
15 02:46:20 15 through the last remaining steps of the Park 500  
16 02:46:22 16 process. Now, we can talk about the nuances of  
17 02:46:24 17 the wording and how authors or whoever put this  
18 02:46:26 18 information together used these terms and how  
19 02:46:28 19 they intended them.

20 02:46:28 20 And I don't know how they did that or  
21 02:46:32 21 what their intent was behind this. But I'm going  
22 02:46:34 22 to keep coming back and saying, base web to me is  
23 02:46:36 23 a very clear point in the process and has a very  
24 02:46:38 24 clear physical aspect of that product.

25 02:46:40 25 Tobacco sheet is another point in the

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1 Darrah - Highly Confidential - Trade Secret  
:46:42 2 process and another set of physical  
02:46:44 3 characteristics to it.

02:46:48 4 Q. Mr. Darrah, isn't the final product  
02:46:56 5 that comes out of Park 500 sized tobacco sheet?

02:47:02 6 A. I call it tobacco sheet.

02:47:06 7 Q. Have you heard it referred to as  
02:47:08 8 sized tobacco sheet?

02:47:08 9 A. No, I have not.

02:47:26 10 Q. Have you ever heard base web referred  
02:47:30 11 to as unsized tobacco sheet?

02:47:30 12 A. No, I have not.

02:47:50 13 Q. You can turn to page 99, just because  
:47:52 14 I had mentioned it, but I'm going to stop going  
02:47:54 15 through these. I mentioned 99 just because it  
02:47:56 16 has -- if you look at it on the second and third  
02:48:02 17 paragraph, there's a reference to a sheet of  
02:48:04 18 tobacco, and there's a reference to a continuous  
02:48:04 19 sheet of tobacco.

02:48:04 20 Do you see those two references?

02:48:06 21 A. Yes, I do.

02:48:08 22 Q. And those are uses of those terms in  
02:48:12 23 this stage of the process that you are not  
02:48:12 24 familiar with; is that correct?

02:48:16 25 A. No, I am not familiar with their

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1 Darrah - Highly Confidential - Trade Secret  
:48:20 2 generic utilization to describe the process.

02:48:44 3 Q. That's what I mean. Let's go back to  
02:48:46 4 page 5 of the RL process overview.

02:48:52 5 (Witness complies.)

02:48:56 6 A. 5 or 5-A?

02:48:58 7 Q. You keep going and you get to 5.

02:49:02 8 A. Okay.

02:49:06 9 Q. And page 5 is the first page of text  
02:49:10 10 on the pneumatic conveyance system. Do you see  
02:49:10 11 that?

02:49:12 12 A. Mm-hmm.

02:49:18 13 Q. I actually want to go over some of  
02:49:24 14 these terms. Do you want to read this so you  
02:49:26 15 understand what it is?

02:49:26 16 (Witness complies.)

02:49:40 17 A. Okay. The last sentence there seems  
02:49:42 18 to be -- we're missing a word or something.

02:49:44 19 Q. I agree with that. The next to last  
02:49:48 20 sentence, I believe we are -- let me just try to  
02:49:52 21 figure out where we are. This is the dry raw  
02:49:54 22 materials referred to here, that's what you were  
02:49:56 23 calling the basic raw material?

02:49:56 24 A. Mm-hmm. Yes, that's correct.

02:49:58 25 Q. And it's in the pulper?

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1 Darrah - Highly Confidential - Trade Secret

..:49:58 2 A. That is correct.

02:50:00 3 Q. And the basic raw material or the dry  
02:50:06 4 raw material is primarily stems, there are some  
02:50:10 5 small tobacco parts and there's some -- I think  
02:50:16 6 it's called broke, things that are out of spec or  
02:50:18 7 something. That's what the dry raw material,  
02:50:20 8 basic raw material is?

02:50:20 9 MR. NUNLEY: Objection as to form.  
02:50:26 10 John, I would like you to be more specific in  
02:50:28 11 your questions, please. Objection as to form.  
02:50:30 12 It's compound.

02:50:32 13 Q. What do you understand to be the  
..:50:34 14 basic raw material?

02:50:36 15 A. The basic raw material is made up of  
02:50:40 16 stems and other tobacco by-products that were  
02:50:44 17 generated through various processes of preparing  
02:50:46 18 tobacco to be converted into cut filler for  
02:50:48 19 manufacturing the cigarettes or the actual  
02:50:50 20 cigarette manufacturing process itself.

02:50:52 21 Q. 70 percent or more of it is stems?

02:50:54 22 A. I don't remember what the exact  
02:50:56 23 percentage of stems versus the other by-products  
02:50:58 24 were, Mr. Payton.

02:51:00 25 Q. But the largest single percentage is

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1 Darrah - Highly Confidential - Trade Secret  
:51:02 2 stems; isn't that right?

02:51:04 3 A. Yes, that's correct.

02:51:08 4 Q. And the second sentence here, the  
02:51:10 5 material, the dry raw material or the basic  
02:51:14 6 material is mixed with a specified amount of  
02:51:16 7 dilution, and then the paren says, "combination  
02:51:22 8 of RBW, WEL-3, and broke," close paren, to form a  
02:51:22 9 slurry.

02:51:28 10 RBW is rich brown water?

02:51:28 11 A. I believe so.

02:51:30 12 Q. Do you know what rich brown water  
02:51:30 13 is?

02:51:34 14 A. Let me say that I think that the rich  
02:51:38 15 brown water was what was the watery squeezed  
02:51:42 16 material that came out of the second press of the  
02:51:44 17 three sequential press lines, if I'm not  
02:51:44 18 mistaken.

02:51:46 19 Q. And the WEL-3, which I believe is  
02:51:50 20 weak extracted liquor 3?

02:51:52 21 A. I believe that was the third press,  
02:51:54 22 watery solution that was squeezed out.

02:51:58 23 Q. And these are solutions that come  
02:52:04 24 from water being mixed in with the dry raw  
02:52:06 25 material? Is that correct?

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1 Darrah - Highly Confidential - Trade Secret

2:52:10 2 A. Let me say that the dry raw material  
02:52:14 3 that goes to the pulper is mixed with the RBW and  
02:52:16 4 WEL-3 to create the initial slurry.

02:52:16 5 Q. Okay.

02:52:18 6 A. That in turn goes to each one of the  
02:52:22 7 three presses in sequence.

02:52:32 8 Q. The rich brown water and the WEL-3

02:52:36 9 both contain solubles that are extracted from the  
02:52:40 10 tobacco material?

02:52:40 11 MR. NUNLEY: Objection as to form.

02:52:42 12 Compound question.

02:52:48 13 Q. Does the rich brown water contain  
02:52:52 14 solubles extracted from the tobacco material?

02:52:56 15 A. At the point of the third press, yes,  
02:53:00 16 I believe that there were tobacco solubles in the  
02:53:02 17 rich brown water.

02:53:06 18 Q. And does the WEL-3 contain solubles  
02:53:08 19 that were extracted from the tobacco material?

02:53:10 20 A. I believe that is correct.

02:53:14 21 Q. And the solubles that are extracted  
02:53:18 22 from tobacco material contain nicotine, don't  
02:53:18 23 they?

02:53:20 24 A. I don't know.

02:53:30 25 Q. You don't know? Do you know if

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1 Darrah - Highly Confidential - Trade Secret

:53:32 2 nicotine is a soluble?

02:53:34 3 A. Let me say that I believe nicotine is  
02:53:38 4 soluble in water.

02:53:56 5 Q. What do you understand to be the  
02:54:00 6 components of the solubles that are extracted?

02:54:02 7 MR. NUNLEY: Do you want him -- John,  
02:54:06 8 you know, I'll tell you, you can conduct your  
02:54:10 9 investigation, your deposition any way you want,  
02:54:14 10 but I said before and I do believe this is  
02:54:16 11 beneath you.

02:54:30 12 Q. Mr. Darrah, if nicotine is soluble in  
02:54:32 13 water, then isn't nicotine one of the solubles  
54:36 14 that's extracted from the tobacco?

02:54:36 15 A. Mr. Payton, I don't know if it was  
02:54:38 16 extracted from the tobacco or not in this  
02:54:40 17 process.

02:54:56 18 Q. Do you know if Philip Morris in the  
02:55:04 19 course of the RL process took measurements to  
02:55:10 20 determine the nicotine level at any point in the  
02:55:10 21 process?

02:55:12 22 A. No, I don't.

02:55:14 23 Q. Do you know if Philip Morris in the  
02:55:16 24 course of the RL process took measurements to  
02:55:20 25 determine the alkaloid level at any point in the

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1 Darrah - Highly Confidential - Trade Secret  
2 process?

02:55:26 3 A. No, I don't.

02:55:28 4 Q. Do you know that or if nicotine is an  
5 alkaloid?

02:55:30 6 A. No, I don't.

7 (Darrah Exhibit 8 for  
8 identification, Philip Morris interoffice  
9 correspondence from A. Dixon to S. Darrah dated  
10 January 21, 1991.)

02:56:22 11 Q. Mr. Darrah, you have just been handed  
02:56:26 12 a one-page document dated January 21, 1991, a  
02:56:30 13 Philip Morris interoffice correspondence from A.  
14 :56:34 14 Dixon to S. Darrah. It has production number PA  
02:56:44 15 412888 or 2030013912. The subject is capital  
02:56:48 16 appropriation request, WEL clean up system, Park  
02:56:48 17 500.

02:56:50 18 Do you know an A. Dixon?

02:56:52 19 A. Yes, I do.

02:56:52 20 Q. Who is that?

02:56:56 21 A. That is Ms. Audrey Dixon.

02:56:58 22 MR. NUNLEY: Mr. Payton, is there any  
02:57:00 23 reason not to identify the document by exhibit  
02:57:00 24 number?

02:57:00 25 MR. PAYTON: I did.

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MANHATTAN REPORTING CORP.

1 Darrah - Highly Confidential - Trade Secret

:57:02 2 MR. NUNLEY: For the record?

02:57:06 3 MR. PAYTON: I'm sorry. This is

02:57:14 4 Darrah 8.

02:57:16 5 MR. NUNLEY: That's part of my have  
02:57:22 6 confusion. We haven't been identifying them.

02:57:24 7 MR. BROWN: 8 it is.

02:57:26 8 MR. PAYTON: I appreciate that. I  
02:57:28 9 had thought I had done that.

02:57:46 10 Q. Who is Audrey Dixon?

02:57:46 11 A. I believe at this time she was the  
02:57:50 12 general manager of the processing plants.

02:57:56 13 Q. And the processing plants included  
02:57:58 14 the Park 500 and the BL facility?

02:57:58 15 A. That is correct.

02:58:06 16 Q. Do you remember this request?

02:58:10 17 A. I have a vague recollection of the  
02:58:10 18 request.

02:58:16 19 Q. Do you remember if you approved it?

02:58:20 20 A. Well, Mr. Payton, let me say this. I  
02:58:22 21 don't know if I approved it or not, but if I had  
02:58:26 22 an ROI of 19.2 percent and having a five-year  
02:58:28 23 payback period on this, just reading this, I  
02:58:30 24 can't see that I would not approve it. That  
02:58:32 25 would be a stupid thing to do.

MANHATTAN REPORTING CORP.

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1 Darrah - Highly Confidential - Trade Secret

:58:32 2 So I am going to be hypothetical and  
02:58:34 3 say, yes, I think I did approve this.

02:58:58 4 Q. Mr. Darrah, do you or can you  
02:59:00 5 describe the difference in operations between  
02:59:06 6 lines 1 and 2 and line 3 at Park 500?

02:59:12 7 Let me focus a little bit more on  
02:59:20 8 this. This capital request relates to something  
02:59:24 9 that appears to be specific to line 3. That's  
02:59:30 10 how it identifies itself. And I'm asking if you  
02:59:36 11 can tell me what is unique about line 3 that this  
02:59:40 12 request is focusing on, if you can do it.

02:59:42 13 A. I'm not sure I can do it.

00:12 14 Q. Do you know if prior to this request,  
03:00:16 15 if we assume it was approved, do you know if  
03:00:18 16 prior to this request line 3 used rich brown  
03:00:22 17 water in the cleansing part of the process?

03:00:28 18 A. I don't know to that level of detail,  
03:00:30 19 Mr. Payton.

03:01:16 20 Q. Do you know what thick size is?

03:01:24 21 A. Thick size. I have an image in my  
03:01:26 22 mind of what it is, but as far -- again, as a  
03:01:28 23 generic term to describe part of the process at  
03:01:28 24 Park 500, no.

03:02:04 25 Q. I'm going to show you a document that

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1 Darrah - Highly Confidential - Trade Secret  
2  
3 we have just marked Darrah Number 9. It's a  
4 one-page document dated January 23, 1991. Philip  
5 Morris interoffice correspondence. Again, it's  
6 from A. Dixon to you. The subject is capital  
7 appropriation request, thick size clean up. It  
has a production number PA 342127 or 2030310845.

8 (Darrah Exhibit 9 for  
9 identification, one-page Philip Morris  
10 interoffice correspondence from A. Dixon to Mr.  
11 Darrah dated January 23, 1991.)

03:02:32 12 Q. Why don't you take a look at this and  
03:02:38 13 see if this refreshes your recollection at all  
1 :02:40 14 about this request.

03:02:42 15 MR. NUNLEY: It's been marked as  
03:02:42 16 Darrah Number 9.

03:02:50 17 MR. PAYTON: I said that, yes.

03:03:14 18 (Witness complies.)

03:03:16 19 A. I understand your question about  
03:03:18 20 thick size and the application at this stage of  
03:03:20 21 the process. Yes, I do understand it.

03:03:28 22 Q. Do you remember this request?

03:03:30 23 A. Not specifically.

03:04:24 24 Q. It's my understanding, and I'll just  
03:04:26 25 represent to you, Mr. Darrah, that this request

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1           Darrah - Highly Confidential - Trade Secret

:04:30   2 was not approved, I believe it was withdrawn,  
03:04:32   3 whatever its merits look like to you now, I don't  
03:04:36   4 think you took any action on it. Do you know how  
03:04:44   5 or if the thick size problem was solved?

03:04:46   6 A.     No, I don't.

03:05:56   7 Q.     In the RL process, one stage in the  
03:06:02   8 process is to remove the potassium nitrate; is  
03:06:06   9 that correct?

03:06:08   10 A.     I believe so.

03:06:10   11 Q.     Do you know why the potassium nitrate  
03:06:10   12 is removed?

03:06:10   13 A.     No, I do not.

' :07:02   14 Q.     I asked you a few questions about the  
03:07:04   15 description of the size batch prep operation that  
03:07:10   16 is in Darrah 2. I'm going to read you the little  
03:07:12   17 description. You can look back if you want, but  
03:07:14   18 it's one sentence, and I've already read it to  
03:07:16   19 you.

03:07:18   20 It is "After the flavors," and it  
03:07:20   21 refers here to "Tobacco extracts are mixed and  
03:07:24   22 sampled to ensure proper composition, then they  
03:07:28   23 are stored and supplied when needed for applying  
03:07:28   24 to the base web sheet."

03:07:32   25 Do you know how long the size is

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1 Darrah - Highly Confidential - Trade Secret

03:07:32 2 stored?

03:07:36 3 A. I don't remember the time frames that  
03:07:36 4 we had.

03:07:44 5 Q. Do you remember the maximum length of  
03:07:46 6 storage time that would be permissible for the  
03:07:50 7 size? Even in rough terms.

03:07:52 8 A. I don't know. I don't remember.

03:08:42 9 Q. Now, Mr. Darrah, do you know if the  
03:08:52 10 size from line 1 is ever transported and used in  
03:08:58 11 the line 2 size operation?

03:08:58 12 A. No, I don't.

03:09:28 13 Q. Do you know if in the course of the  
03:09:38 14 RL process from time to time what you've been  
03:09:42 15 referring to as the base web is sometimes either  
03:09:48 16 thrown away or returned to the pulper tank?

03:09:50 17 A. If my memory serves me right, in line  
03:09:56 18 1 at Park 500, that if we had during a startup --  
03:09:58 19 we were generating base web off the Yankee dryer,  
03:10:00 20 and I think it fell on a conveyor, and the  
03:10:04 21 conveyor would move it out onto the floor, that  
03:10:06 22 we would take that base web and then put it back  
03:10:10 23 through the broke pulper, after we had the base  
03:10:12 24 web running through the tunnel dryers going to  
03:10:18 25 the size press; so to my recollection, that we

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MANHATTAN REPORTING CORP.

1           Darrah - Highly Confidential - Trade Secret

0:10:24 2       would recycle the base web, primarily on startup  
03:10:26 3       after we had a sheet break, so to speak, or it  
03:10:30 4       was on a fresh startup from a plant shutdown.

03:10:34 5       Q.      Were there occasions where the base

03:10:42 6       web would be sent back to the pulper because of  
03:10:44 7       low soluble levels?

03:10:48 8       A.      I don't remember that occurring.

03:10:52 9       Q.      Or low DNCEL levels?

03:10:54 10       MR. NUNLEY: John, I don't think you  
03:10:56 11       would have DNCEL on base web.

03:10:58 12       A.      That's --

0^:11:00 13       Q.      I didn't mean that. I mean because  
0.:11:06 14       there was not enough DNCEL to create sized sheet  
03:11:08 15       or tobacco sheet, as is your reference to the  
03:11:10 16       finished product.

03:11:14 17       A.      No, I don't remember us generating  
03:11:18 18       wasted base web just because we didn't have size  
03:11:20 19       at the size press ready to make the tobacco  
03:11:20 20       sheet.

03:12:12 21       Q.      Mr. Darrah, is it your understanding  
03:12:14 22       that the soluble content of the dry raw materials  
03:12:18 23       varied over time?

03:12:20 24       A.      I don't know, Mr. Payton.

0^:12:30 25       Q.      Was the final product that came out

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MANHATTAN REPORTING CORP.

1 Darrah - Highly Confidential - Trade Secret  
1 :12:36 2 of Park 500, RL or whatever the terminology --  
03:12:38 3 what is the terminology? What would you refer to  
03:12:38 4 it as?  
03:12:40 5 A. RL sheet.  
03:12:44 6 Q. RL sheet. Is the final product that  
03:12:50 7 comes out, RL sheet, is that a product that was  
03:12:52 8 uniform?  
03:12:54 9 A. To the best of our ability to  
03:12:56 10 manufacture it that way.  
03:13:18 11 Q. And the final product, RL sheet, was  
03:13:22 12 uniform, whether or not the incoming materials  
03:13:24 13 were uniform?  
0 13:26 14 MR. NUNLEY: Well, John, your  
03:13:28 15 preamble question said he didn't know. Your  
03:13:30 16 question I think assumes something that's not  
03:13:34 17 established in this deposition. Unless you want  
03:13:38 18 to represent that they were not uniform.  
03:13:40 19 MR. PAYTON: Let me just ask again.  
03:13:42 20 I'll just ask one more time, and if that's where  
03:13:44 21 it is, I'll leave it alone.  
03:13:48 22 Q. Mr. Darrah, are you saying that you  
03:13:54 23 do not know whether or not the soluble content of  
03:14:00 24 the dry raw materials that go into the first  
03:14:06 25 stage of the RL process varied over time?

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MANHATTAN REPORTING CORP.

1 Darrah - Highly Confidential - Trade Secret

03:14:08 2 A. I saw no data or no information that  
03:14:10 3 would say that happened or did not happen.

03:14:18 4 Q. Do you know if Philip Morris measured  
03:14:22 5 the dry raw materials to determine soluble  
03:14:24 6 content?

03:14:24 7 A. No, I don't.

03:14:38 8 Q. Did Philip Morris measure the SEL,  
03:14:44 9 CEL and DNCEL to determine soluble content?

03:14:46 10 A. I don't know, Mr. Payton.

03:14:52 11 Q. Do you know if the final sheet, the  
03:14:54 12 RL sheet, was measured to determine soluble  
03:14:54 13 content?

03:14:56 14 A. I don't know that either.

03:15:24 15 Q. RLTC, is that a reference to RL with  
03:15:26 16 top casing? Or do you know?

03:15:30 17 A. I don't know what the TC stands for.

03:15:34 18 Q. Do you know what top casing is?

03:15:36 19 A. I know what top casing is in  
03:15:38 20 reference to the cigarette manufacturing  
03:15:40 21 process.

03:15:46 22 Q. Well, in reference to the cigarette  
03:15:48 23 manufacturing process, what is top casing?

03:15:50 24 A. Top casings are flavorings that are  
03:15:56 25 added to burley tobacco following their drying

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1 Darrah - Highly Confidential - Trade Secret

:16:00 2 within a Proctor & Schwarz dryer, and just  
03:16:02 3 subsequent to their being added as part of the  
03:16:06 4 total blend of strip tobaccos prior to cutting.  
03:16:08 5 It's a primary process function.

03:16:34 6 MR. NUNLEY: Is Schwarz

03:16:36 7 S-c-h-w-a-r-t-z?

03:16:40 8 THE WITNESS: I think it's

03:16:48 9 S-c-h-w-a-r-z. Is that right, Mr. Payton?

03:16:50 10 MR. PAYTON: That's what I think,  
03:16:50 11 yes.

12 (Darrah Exhibit 10 for  
13 identification, Philip Morris interoffice  
14 correspondence from J. E. Bickett and S. M.  
15 Hayward to N. O. Fowler, R. A. Lively, D. Milby  
03:18:00 16 and W. R. Moore.)

03:18:06 17 Q. Mr. Darrah, you've just been handed  
03:18:08 18 what's been marked Darrah Exhibit 10, a  
03:18:12 19 three-page document dated February 27, 1987,  
03:18:14 20 Philip Morris interoffice correspondence. It's  
03:18:18 21 from J. E. Bickett and S. M. Hayward to  
03:18:24 22 Messrs. N. O. Fowler, R. A. Lively, D. Milby and  
03:18:26 23 W. R. Moore.

03:18:28 24 It has production numbers -- actually  
03:18:30 25 this one only has your production number,

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1 Darrah - Highly Confidential - Trade Secret

03:18:40 2 2031024095, 4096, and 4097.

03:18:42 3 Am I right that you have not seen  
03:18:44 4 this document before?

03:18:46 5 A. That is correct. I have not seen the  
03:18:48 6 document.

03:19:02 7 Q. Can you tell -- the subject of this  
03:19:06 8 document is 1987 PM U.S.A. oven volatile  
03:19:12 9 adjustment. Do you know what that means, "oven  
03:19:12 10 volatile"?

03:19:16 11 A. I know what the term "oven volatile"  
03:19:16 12 means.

03:19:18 13 Q. What is it?

03:19:22 14 A. I believe it is those elements that  
03:19:28 15 are included in tobacco that will volatize when  
03:19:32 16 put under a certain amount of heat for a certain  
03:19:34 17 amount of time, and be pulled off tobacco, so to  
03:19:38 18 speak.

03:19:38 19 Q. And that just means it will become a  
03:19:40 20 vapor, is that right?

03:19:40 21 A. That's correct. The majority of  
03:19:40 22 which is water.

03:19:42 23 Q. It will just evaporate, you mean, at  
03:19:42 24 some temperature?

03:19:42 25 A. That's right.

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1 Darrah - Highly Confidential - Trade Secret

0 :19:46 2  
03:19:48 3 MR. NUNLEY: Mr. Payton, let me just  
03:19:50 4 say that this document, perhaps you'll tell me  
03:19:52 5 otherwise, but it appears to be a manufacturing  
03:19:58 6 document. It further appears to be outside the  
03:20:02 7 1/1/88 to 3/24/94 period. And it would also be a  
03:20:02 8 document, I believe, when Mr. Darrah was in  
Europe.

03:20:04 9 MR. PAYTON: It is a document when he  
03:20:06 10 was in Europe, I agree with that.

03:20:06 11 MR. NUNLEY: You will also agree that  
03:20:08 12 it's outside the manufacturing portion of  
03:20:14 13 discovery time frame.

0 :20:26 14 MR. PAYTON: It's before 1988. I'll  
03:20:38 15 agree with that, too. But I'll say this. If in  
03:20:44 16 fact Philip Morris manufactured Liggett brands  
03:20:48 17 for domestic distribution in the United States in  
03:20:54 18 1987, I think it's open for discovery.

03:20:56 19 MR. NUNLEY: Well, all I can tell you  
03:20:58 20 there, and we've had this discussion before, to  
03:21:00 21 my knowledge that didn't occur.

03:21:02 22 MR. PAYTON: That's all I'm asking  
03:21:02 23 him about.

03:21:04 24 MR. NUNLEY: You have questioned lots  
03:21:06 25 of witnesses, and I believe the testimony has

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1 Darrah - Highly Confidential - Trade Secret

03:21:08 2 been that that hasn't occurred. If you have  
03:21:12 3 reason to believe that it did occur, I'll be  
03:21:14 4 happy to take that and try to track it down for  
03:21:16 5 you. I've made that offer before.

03:21:18 6 MR. PAYTON: I have -- I've made that  
03:21:20 7 request, and I haven't gotten an answer back. I  
03:21:22 8 don't intend to ask this witness anything other  
03:21:24 9 than what I just said.

03:21:26 10 MR. NUNLEY: I can't believe you said  
03:21:28 11 you haven't gotten an answer back.

03:21:30 12 MR. PAYTON: The request I made to  
03:21:34 13 you and David Murphy, which happened at your  
03:21:36 14 office just before the --

03:21:36 15 MR. NUNLEY: I know when the meeting  
03:21:38 16 was, yes.

03:21:38 17 MR. PAYTON: I never got an answer  
03:21:40 18 back.

03:21:40 19 MR. NUNLEY: John, I told you at that  
03:21:42 20 meeting --

03:21:42 21 MR. PAYTON: You were going to go  
03:21:46 22 off -- you said that you did not appreciate that  
03:21:50 23 we were asking about Philip Morris actually  
03:21:56 24 manufacturing and distributing cigarettes not  
03:21:58 25 necessarily under the Liggett brand name or

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1 Darrah - Highly Confidential - Trade Secret  
2 giving them back to Liggett and letting Liggett  
3 sell them, and you were going to go off and get  
4 me an answer.

5 MR. NUNLEY: John, what I told you  
6 was it was not my understanding that we sold any  
7 Liggett --

8 MR. PAYTON: That's what I meant, I'm  
9 sorry. What I asked was, would you look into  
10 whether or not Philip Morris manufactured them,  
11 and they were distributed by anyone in the United  
12 States, including Liggett, not that Philip Morris  
13 sold them in the United States.

14 MR. NUNLEY: We've had how many  
15 depositions since that meeting? And has anyone  
16 suggested to you otherwise?

17 MR. PAYTON: This is the only person  
18 I've asked since then. And I understand  
19 Mr. Killory asked one other witness about that.  
20 But I haven't asked every deponent. And I didn't  
21 intend to go -- this is the only reason I'm  
22 asking about this document, and I'm going to  
23 accept his answer.

24 MR. NUNLEY: Well, I still stand on  
25 the position that this is outside the scope of

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1 Darrah - Highly Confidential - Trade Secret  
00:22:52 2 manufacturing discovery. You can ask the  
03:22:54 3 question and he can certainly answer.

03:22:56 4 MR. PAYTON: All right.

03:23:02 5 MR. NUNLEY: I think it's been asked  
03:23:04 6 and answered before today, in this deposition.

03:23:08 7 MR. PAYTON: It was asked in this  
03:23:10 8 deposition, and I didn't have the document, it  
03:23:12 9 wasn't actually in this room when I asked the  
03:23:16 10 question, and I simply went upstairs and got the  
03:23:16 11 document.

03:23:26 12 Q. Mr. Darrah, I want you to take a look  
03:23:34 13 at this document with me. The document is -- the  
03:23:38 14 subject is 1987 PM U.S.A. oven volatile  
03:23:42 15 adjustment. And the subject says, "Domestic king  
03:23:48 16 size soft pack and 100s OV increase." Do you see  
03:23:48 17 that?

03:23:50 18 A. Mm-hmm. Yes, I do.

03:23:58 19 Q. And in the text, the last line of  
03:24:00 20 text before we get the 1, 2 and 3, it says "The  
03:24:04 21 brands affected by this specification revision  
03:24:08 22 are," and number 1 is "all PM U.S.A. soft pack  
03:24:12 23 regular brands," and number 2 is "exceptions."

03:24:14 24 Do you see that?

03:24:14 25 A. Mm-hmm. Yes, I do.

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1 Darrah - Highly Confidential - Trade Secret

. 24:18 2 Q. And exception B refers to the Liggett  
03:24:24 3 brands, L&M, Lark, Chesterfield, and Eve.

03:24:32 4 The question I have is whether or not  
03:24:38 5 the Liggett brands are domestic brands, as the  
03:24:42 6 subject seems to indicate, or is this saying  
03:24:42 7 something else, or do you know?

03:24:44 8 MR. NUNLEY: Objection to your  
03:24:46 9 characterization of the document. It speaks for  
03:24:52 10 itself. I think the question posed is, if I  
03:24:56 11 understand it, did Philip Morris manufacture and  
03:25:00 12 sell domestically Liggett brands.

03:25:04 13 Q. Did it manufacture for domestic  
. 25:06 14 consumption, whether it sold them or not, Liggett  
03:25:08 15 brands?

03:25:12 16 A. Well, I think, Mr. Payton, we talked  
03:25:12 17 about this earlier this morning.

03:25:14 18 Q. We did.

03:25:16 19 A. I thought that I answered it then. I  
03:25:16 20 have no knowledge about what happened back here  
03:25:22 21 in 1987. From the time frame that I came back to  
03:25:24 22 the United States, late 1989, until I left the  
03:25:32 23 company in March of 1995, I had no knowledge of  
03:25:34 24 any manufacturing of Liggett brands for sale or  
03:25:34 25 distribution within the United States.

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1 Darrah - Highly Confidential - Trade Secret

25:46 2 I might also point out, and as I  
03:25:48 3 said, I don't know about this here, but these  
03:25:48 4 brands were manufactured for export.

03:25:48 5 Q. Which ones?

03:25:50 6 A. L&M, Lark, Chesterfield and Eve.

03:25:52 7 Q. These brands were certainly  
03:25:56 8 manufactured for export during this time frame,  
03:25:58 9 because you are aware of that, being at Philip  
03:26:00 10 Morris EEC?

03:26:02 11 A. Yes, that's correct.

03:26:04 12 Q. You don't know if during this same  
03:26:08 13 time frame they were manufactured and were  
26:12 14 distributed by some other company in the United  
03:26:12 15 States, or do you know?

03:26:12 16 A. I have no knowledge of that.

03:26:16 17 Q. Do you see C, where it refers to  
03:26:20 18 "Virginia Slims Lights Charcoal Filter will not  
03:26:22 19 be revised since it is produced with Lark  
03:26:24 20 filler," do you see that?

03:26:26 21 A. Yes, I do.

03:26:28 22 Q. Is Virginia Slims Lights a  
03:26:34 23 domestically distributed and sold cigarette?

03:26:38 24 A. Virginia Slims Lights is. Virginia  
03:26:40 25 Slims Lights with a charcoal filter is not.

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1 Darrah - Highly Confidential - Trade Secret

2 Q. And was it then? Or do you know?

3 A. I have no way of knowing.

4 THE VIDEO OPERATOR: We're going off

5 the record. The time on the screen is 3:27:23.

6 (A recess was taken.)

7 THE VIDEO OPERATOR: This is

8 videotape number 3, the continuation of the

9 deposition of Mr. Darrah. Today is July 14th,

10 1995. The time is 3:54:23. You're on the

11 record.

12 Q. Mr. Darrah, is RL an artificial  
13 product?

14 A. An artificial product?

15 Q. Yes.

16 A. No, I wouldn't say it's an artificial  
17 product.

18 Q. How would you describe it?

19 MR. NUNLEY: Objection as to form.

20 In what context, John?

21 Q. It's not a natural product, is it?

22 A. Let me say that I think it's made out  
23 of natural materials.

24 Q. RL contains, according to Philip  
25 Morris documents, about 10 percent chemical

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1 Darrah - Highly Confidential - Trade Secret  
2 :55:22 additives. Do you agree with that?

3 03:55:24 A. I don't know what the percent of  
4 03:55:28 additives is to the product itself.

5 03:55:30 Q. Do you accept my representation that  
6 03:55:30 the documents say 10 percent?

7 03:55:32 MR. PAYTON: I don't think you'll  
8 03:55:34 disagree with me, Mr. Nunley. I'll get the  
9 03:55:34 documents.

10 03:55:36 MR. NUNLEY: I don't think it's  
11 03:55:36 different than milk or anything else. What is  
12 03:55:38 the point, that if it contains 10 percent  
13 03:55:40 chemicals it's not a natural product?

14 ' :55:44 Q. If it contains 10 percent chemical  
15 03:55:50 additives, your statement that it contains --  
16 03:55:54 that it is made out of natural materials, 10  
17 03:55:56 percent of it at least is not natural.

18 03:56:00 A. I'll accept that your premise is  
19 03:56:02 right that it has 10 percent of nonnatural  
20 03:56:06 materials. Then I would say it is a 90 percent  
21 03:56:10 natural product, then.

22 03:56:12 Q. Is RL a manufactured product?

23 03:56:14 A. Yes, it is.

24 03:56:36 Q. The base web which is referred to in  
25 03:56:40 some of the documents we looked at as the tobacco

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1 Darrah - Highly Confidential - Trade Secret  
;56:44 2 sheet, do you consider that to be a natural  
03:56:46 3 product?

03:56:48 4 A. I would consider the base web to be a  
03:56:50 5 natural product also.

03:56:52 6 Q. A manufactured natural product?

03:56:52 7 A. Yes.

03:56:54 8 Q. A product manufactured from natural  
03:56:56 9 materials?

03:56:56 10 A. Yes.

11 (Darrah Exhibit 11 for  
12 identification, Philip Morris Incorporated's  
13 answers to American Broadcasting Companies' first  
14 set of interrogatories.)

03:57:32 15 Q. Mr. Darrah, you've just been handed  
03:57:34 16 what's been marked Darrah Exhibit 11. It is  
03:57:38 17 Philip Morris Incorporated's answers to American  
03:57:40 18 Broadcasting Companies' first set of  
03:57:42 19 interrogatories.

03:57:46 20 And it consists of a 27 -- I mean,  
03:57:54 21 I'm sorry, it consists of 17 pages of answers.  
03:58:00 22 It has an attached addendum that I believe is 27  
03:58:04 23 pages long, and it has some exhibits attached to  
03:58:06 24 it.

03:58:12 25 Have you ever seen this before? Just

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:58:14 2 quickly turn through it.

03:58:18 3 (Witness complies.)

03:58:44 4 A. No, I've not seen this before.

03:58:46 5 Q. Did you look at the addendum as

03:58:46 6 well?

03:58:50 7 A. I just briefly went through -- just

03:58:52 8 scanned the pages very quickly.

03:58:56 9 Q. You didn't recognize anything in the

03:58:58 10 addendum as something you had seen before?

03:58:58 11 A. No.

03:59:02 12 Q. Did you look at the exhibits? There  
are Exhibits A through J. I just want you to

:59:12 14 look at the exhibits and see if you have seen any  
03:59:12 15 of the exhibits before.

03:59:44 16 A. Mr. Payton, I've seen some block flow  
03:59:46 17 diagrams of our manufacturing process before. I  
03:59:50 18 don't specifically recognize these as being those  
03:59:52 19 that I have seen. But there are elements in here  
03:59:54 20 that I have seen before, and -- as far as the  
03:59:56 21 graphical representations are concerned.

03:59:58 22 MR. NUNLEY: Mr. Payton, something  
04:00:00 23 just occurred to me as I look at these. We sent  
04:00:06 24 you some interrogatory answers late last night.  
04:00:10 25 They should have been marked trade secret, and I

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00:12 2 don't believe that they were.

04:00:12 3 I don't want to stop the deposition,

04:00:16 4 but I wonder if I could ask Mr. Brown to call

04:00:22 5 Mr. Goldblatt and tell him it should have been

04:00:24 6 marked trade secret, and it will be my intention

04:00:26 7 to do so just as soon as I get back to the

04:00:28 8 office. I appreciate that. Thank you.

04:00:28 9 MR. BROWN: They were sent last

04:00:30 10 night?

04:00:32 11 MR. NUNLEY: Yes, about 11:30.

04:00:34 12 MR. BROWN: Directly to Washington?

04:00:38 13 MR. NUNLEY: To Craig Goldblatt

00:40 14 here.

Q. Now, Mr. Darrah, you were telling me

04:00:44 16 that you don't recall seeing any one of these

04:00:48 17 specific exhibits, but what they're describing is

04:00:50 18 familiar to you, and you may have seen a similar

04:00:52 19 description on a similar flow chart?

A. What I'm saying is that this method

04:00:58 21 of graphically representing a process block flow

04:01:00 22 diagram I have seen utilized before.

Q. Let me ask you to go to page 9 of the

04:01:20 24 addendum. It is the page that contains the

04:01:26 25 description of the RL process.

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2 :01:28 2 A. I have that page.

3 04:01:42 3 Q. I'm asking you about only the first  
4 04:01:46 4 paragraph on the page, numbered paragraph 2, RL  
5 04:01:50 5 process. You can read the paragraph if you  
6 04:01:52 6 like. I have a few questions.

7 04:01:54 7 A. Okay. I've read the paragraph.

8 04:01:58 8 Q. This paragraph refers to a reduction  
9 04:02:08 9 of the nicotine naturally occurring in tobacco as  
10 04:02:10 10 a result of the RL process. Do you see that?

11 04:02:10 11 A. Yes, I do.

12 04:02:14 12 Q. Before you read that, were you aware  
13 04:02:20 13 of nicotine being lost in the RL process?

14 .:02:20 14 A. No, I was not.

15 04:02:26 15 Q. Not at all, just weren't aware one  
16 04:02:26 16 way or the other?

17 04:02:26 17 A. Right. That is correct.

18 04:02:54 18 Q. In the RL process, when the solubles  
19 04:03:00 19 are extracted, one of the solubles, the potassium  
20 04:03:06 20 nitrate, is actually removed, I don't know, it's  
21 04:03:08 21 sold as fertilizer or something, is that right?

22 04:03:08 22 A. It is my understanding that it is  
23 04:03:10 23 being sold as fertilizer.

24 04:03:16 24 Q. Philip Morris could at that same  
25 04:03:20 25 point in the process remove the nicotine that is

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2 in the solubles, couldn't it?

3 A. I don't know.

4 Q. Let me ask that you go to page 25 of  
5 the addendum.

6 (Witness complies.)

7 Q. There's a chart, and I want to ask  
8 you some questions only about the chart. And if  
9 you take a look at the chart, it is identifying  
10 different processes necessary to making a  
11 cigarette, BL, RL, ES, IS, expanded tobacco. It  
12 shows alkaloid level coming in, alkaloid level  
13 going out, alkaloid level reduced.

14 :04:28 Do you see that?

15 A. Yes, I do.

16 Q. Were you aware of any of these  
17 reductions in alkaloid levels?

18 A. No, I was not.

19 MR. BROWN: Craig Goldblatt was  
20 informed that they should have been but were not  
21 marked trade secret, and he will ensure that all  
22 copies that we have are marked trade secret.

23 MR. NUNLEY: I appreciate that.  
24 Thank you very much.

25 Q. Does Philip Morris control the level

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:05:38 2 of nicotine in its finished cigarettes?

04:05:40 3 A. To my knowledge, no, they don't.

04:05:54 4 Q. Nicotine level is not a specification

04:05:56 5 for a cigarette?

04:06:02 6 A. The nicotine in by itself is not

04:06:04 7 necessarily a specification for a cigarette.

04:06:08 8 Q. What was the qualification there, "in

04:06:10 9 by itself," what did you mean?

04:06:12 10 A. Well, there is a target that we

04:06:16 11 utilize from a blending standpoint of the tar

04:06:20 12 nicotine ratio. And the nicotine follows

04:06:24 13 basically what the tar level will be.

:06:30 14 Q. Your understanding is that nicotine

04:06:30 15 follows tar?

04:06:32 16 A. That's correct.

04:06:34 17 Q. What does that mean?

04:06:36 18 A. Well, tar is a by-product of the

04:06:42 19 ~~/ pyROlosis~~ ~~/ Paralysis~~ of a tobacco cigarette.

*PyROLOSIS*

04:06:44 20 Q. */ "Paralysis"* means burning?

04:06:46 21 A. Burning. My understanding is, as we

04:06:48 22 design the products, we design the products for

04:06:50 23 tar, tar related to taste and impact and so forth

04:06:54 24 from the consumer acceptability standpoint.

04:06:54 25 The smoked nicotine that's inherent

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0:06:58 2 in the tobaccos that provide that tar, there is a  
04:07:00 3 fairly, I'm going to say, constant ratio of about  
04:07:04 4 ten to one. I think it will vary depending upon  
04:07:06 5 the taste direction and so forth, somewhat.

04:07:08 6 But there is a ratio of about ten to  
04:07:12 7 one, tar to smoked nicotine. As a cigarette is  
04:07:14 8 designed to give a certain delivery of tar, the  
04:07:16 9 nicotine number follows that.

04:07:22 10 Q. Which means that if you know what --  
04:07:24 11 well, strike that. There is a specification for  
04:07:26 12 tar for any particular brand of cigarettes?

01:07:30 13 A. Yes, there is. We are required to  
01:07:32 14 print tar, as you know, on our packs of  
04:07:34 15 cigarettes and advertising and so forth.

04:07:36 16 Q. Well, you print tar and nicotine?

04:07:38 17 A. Yes, it's required to print both.

04:07:40 18 Q. Are both of them specifications?

04:07:44 19 MR. NUNLEY: You mean internal  
04:07:46 20 specifications or government specifications?

04:07:48 21 MR. PAYTON: Well, either one.

04:07:52 22 Q. Clearly both of them are on the  
04:07:52 23 cigarette pack.

04:07:54 24 A. Yes.

04:07:58 25 Q. Are both of them internal Philip

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:08:00 2 Morris specifications for a cigarette?

04:08:02 3 A. No. We use basically tar as the  
04:08:02 4 controlling specification.

04:08:04 5 Q. Okay.

04:08:04 6 A. For the product. And we control the  
04:08:06 7 tar.

04:08:10 8 Q. And by controlling the tar, you also,  
04:08:12 9 since tar follows -- nicotine follows tar?

04:08:12 10 A. Yes.

04:08:14 11 Q. That also controls the nicotine?

04:08:16 12 A. The nicotine will have a  
04:08:18 13 corresponding adjustment to it also as tar is  
04:08:20 14 moved up or down.

04:08:24 15 Q. Did you agree with me that if you  
04:08:26 16 control for the tar you're controlling for the  
04:08:26 17 nicotine?

04:08:28 18 MR. NUNLEY: I don't think he did  
04:08:28 19 agree, I don't know.

04:08:30 20 MR. PAYTON: That's why I'm asking.

04:08:30 21 A. No, I did not agree with that.

04:08:32 22 Q. Why not?

04:08:34 23 A. Because it's not a control element,  
04:08:34 24 that we're trying to control nicotine. We're  
04:08:36 25 controlling tar. A result of controlling tar is

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0..08:40 2 that the nicotine content on a per puff basis of  
04:08:42 3 the total cigarette will also move at about a ten  
04:08:42 4 to one ratio.

04:09:04 5 Q. Are you saying that in controlling  
04:09:10 6 for tar, that will control for nicotine, but your  
04:09:14 7 primary interest is in the tar?

04:09:18 8 A. No, that's not what I said. I said  
04:09:20 9 that we control tar levels in our products. And  
04:09:22 10 by controlling the tar levels, there is a result  
04:09:28 11 of a corresponding reduction or increase in  
04:09:30 12 nicotine, depending upon the way the tar is  
04:09:32 13 moving. And that relationship, as I said, is  
0..09:34 14 about ten to one.

04:09:48 15 Q. Are you aware of Philip Morris  
04:09:58 16 efforts to make a series of cigarettes that could  
04:10:04 17 have the same tar level but varying nicotine  
04:10:06 18 levels?

04:10:22 19 A. No, I'm not. Excuse me. Let me --  
04:10:24 20 let me not retract that but just -- something  
04:10:28 21 just reminded me, I believe that some of the  
04:10:32 22 development products that we did for the ART  
04:10:36 23 facility, that we did look at the reduction in  
04:10:44 24 nicotine at various levels in the ART facility.

04:10:46 25 I do not remember, however, if the

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:10:50 2 tar levels of those products were also at the  
04:10:54 3 same level. So that we did have reductions in  
04:10:58 4 the amount of nicotine extracted, if you will, to  
04:11:00 5 use that term, through the ART facility.

04:11:04 6 I don't remember if we had the same  
04:11:06 7 tar levels for each of those different nicotine  
04:11:08 8 levels.

04:11:10 9 Q. Are you familiar with the term  
04:11:14 10 "nicotine delivery"?

04:11:14 11 A. I've heard the term used.

04:11:16 12 Q. Have you ever heard the term used  
04:11:18 13 within Philip Morris?

:11:20 14 A. No, I have not heard it within Philip  
04:11:20 15 Morris.

04:11:48 16 Q. Is nicotine one of the factors that  
04:11:54 17 keeps smokers smoking?

04:11:56 18 A. You're asking for my opinion?

04:11:56 19 Q. Yes.

04:11:58 20 A. I don't think so.

04:12:02 21 Q. Have you seen any research by Philip  
04:12:06 22 Morris on the subject of whether or not nicotine  
04:12:08 23 is one of the factors that keeps smokers  
04:12:10 24 smoking?

04:12:10 25 A. No, I have not.

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04:12:14 2 Q. Have you had any conversations with  
04:12:16 3 persons at Philip Morris on the subject of  
04:12:20 4 whether or not nicotine is one of the factors  
04:12:24 5 that keeps smokers smoking?

04:12:24 6 A. No, I have not.

04:12:30 7 Q. Do you know Dr. Dunne?

04:12:32 8 A. No, I do not know Dr. Dunne.

04:12:34 9 Q. Do you know who he is?

04:12:34 10 MR. NUNLEY: Are you speaking about  
04:12:36 11 Dr. William Dunne?

04:12:36 12 MR. PAYTON: I am.

04:12:42 13 A. When you said the name, it's somewhat  
04:12:44 14 familiar, I think something I read in the  
04:12:46 15 newspaper about a Dr. Dunne, and I've forgotten  
04:12:50 16 which context of the article -- I think it had to  
04:12:52 17 do with addiction and nicotine and so forth.

04:13:10 18 Q. Dr. Bourlas, who we mentioned briefly  
04:13:14 19 I think this morning, who was he again?

04:13:18 20 A. Dr. Bourlas was the director of  
04:13:20 21 research and development for Philip Morris in the  
04:13:26 22 EEC and worked for me in that capacity for a  
04:13:30 23 period of -- I want to say two to three years  
04:13:30 24 when I was in Europe.

04:13:32 25 Q. This is in the mid-'80s?

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04:13:32 2 A. Yes, that's correct.

04:13:34 3 Q. Do you recall having any conversation  
04:13:42 4 with Dr. Bourlas about nicotine research that  
04:13:44 5 Philip Morris had conducted about nicotine  
04:13:48 6 transfers of smoke?

04:13:50 7 A. I have no recollection of discussions  
04:13:52 8 with him about that, Mr. Payton.

04:13:54 9 Q. About nicotine deliveries?

04:14:00 10 A. Well, let me say, as far as nicotine  
04:14:02 11 deliveries, if you're talking about in the design  
04:14:06 12 of products, it was Mr. Bourlas who was  
04:14:08 13 responsible for product development. Yes, we did  
04:14:12 14 have discussions about tar and smoking nicotine  
04:14:14 15 deliveries through the normal evolution of  
04:14:14 16 product development.

04:14:16 17 Q. In that context --

04:14:18 18 MR. NUNLEY: Let me just find out,  
04:14:22 19 was Mr. Bourlas -- what Philip Morris entity was  
04:14:24 20 Mr. Bourlas associated with at that time?

04:14:28 21 THE WITNESS: Philip Morris EEC.

04:14:28 22 MR. NUNLEY: John, I think these are  
04:14:32 23 export issues.

04:14:32 24 MR. PAYTON: No, they're not. The  
04:14:36 25 research that I'm aware of, and I'm looking at

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0:14:38 2 some of it right now, are general research papers  
04:14:42 3 that he is either copied on -- but they're out of  
04:14:46 4 the Philip Morris research center on subjects  
04:14:46 5 like this.

04:14:48 6 Now, he may not be aware of them, and  
04:14:50 7 he may be telling me about something else, but  
04:14:52 8 I'm just telling you I have a good faith basis to  
04:14:56 9 know that Dr. Bourlas is in the loop on these  
04:14:56 10 things.

04:14:56 11 MR. NUNLEY: But my point is,  
04:15:00 12 Mr. Darrah was receiving that for purposes of  
04:15:04 13 development of a cigarette for EEC. Maybe you  
04:15:06 14 can ask Mr. Bourlas about it, but I think it's  
04:15:08 15 improper to ask Mr. Darrah about it.

04:15:12 16 Q. Mr. Darrah, in the context in which  
04:15:14 17 you just identified conversations you may have  
04:15:20 18 had with Mr. Bourlas, what did the term "nicotine  
04:15:22 19 delivery" mean?

04:15:28 20 A. I think "nicotine delivery," that  
04:15:30 21 term meant the nicotine level in a particular  
04:15:32 22 product as it was related to the tar.

04:15:38 23 Q. And did it refer to the level of  
04:15:42 24 nicotine in the smoke as opposed to the content  
04:15:44 25 of nicotine in the filler?

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.:15:48 2 A. I don't remember exactly the context  
04:15:50 3 in which we talked about it.

04:16:24 4 Q. Were you aware of any discussions at  
04:16:30 5 Philip Morris about Philip Morris's competitors,  
04:16:36 6 including companies that manufactured nicotine  
04:16:38 7 patches?

04:16:44 8 A. I'm aware of one discussion on that  
04:16:44 9 particular subject.

04:16:46 10 Q. When was that?

04:16:50 11 A. I want to say it was approximately a  
04:16:52 12 year to 18 months ago.

04:16:54 13 And it was basically a management  
.17:02 14 review that was conducted in Richmond as part of  
04:17:04 15 a normal operations meeting, where a gentleman  
04:17:06 16 made a general business overview of the nicotine  
04:17:10 17 patch companies that were in manufacture at that  
04:17:12 18 time, and basically looking at their revenues,  
04:17:16 19 their anticipated profits, so on and so forth.

04:17:20 20 Q. Was this discussion about not only  
04:17:26 21 nicotine patches but about other nicotine  
04:17:34 22 containing products such as nicotine inhalers,  
04:17:36 23 aerosols?

04:17:38 24 A. I'm not sure of the specific devices,  
04:17:42 25 but I do remember there were other devices that

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:17:44 2 were designed to produce --

04:17:44 3 Q. Nicotine?

04:17:46 4 A. -- nicotine that were mentioned in

04:17:46 5 that business review.

04:17:48 6 Q. For example, do you recall

04:17:50 7 Nicorette? It's a chewing gum with nicotine in

04:17:52 8 it.

04:17:54 9 A. Yes, I think we also mentioned that,

04:17:54 10 too.

04:17:56 11 Q. Was the term "nicotine delivery

04:18:00 12 devices" used to describe this array of

04:18:02 13 products?

:18:04 14 A. I don't remember if that term was

04:18:04 15 used, Mr. Payton.

04:18:18 16 Q. Was this described as a growing

04:18:20 17 although small segment of the market?

04:18:24 18 A. The best of my recollection was that

04:18:30 19 generally speaking, the overall business results,

04:18:32 20 the profitability of these companies that were in

04:18:34 21 this business was not really that solid or

04:18:36 22 optimistic for the future.

04:18:50 23 Q. Do you remember who made the

04:18:50 24 presentation?

04:18:52 25 A. I think a Dr. Carchman made the

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..:18:52 2 presentation.

04:18:54 3 Q. Richard Carchman?

04:18:54 4 A. Yes.

04:18:56 5 Q. Do you know Richard Carchman?

04:18:58 6 A. I know of him.

04:19:00 7 MR. NUNLEY: Mr. Payton, if you have  
04:19:02 8 a document in front of you, can you give us the  
04:19:06 9 date of this discussion?

04:19:14 10 MR. PAYTON: Yes.

04:20:54 11 MR. NUNLEY: I didn't mean to  
04:20:56 12 interrupt -- I thought you had the document in  
04:20:58 13 front of you.

..:21:02 14 MR. PAYTON: That's fine.

15 (Darrah Exhibit 12 for  
16 identification, 1992 through 1996 Philip Morris  
17 U.S.A. R&D strategic plan.)

04:23:10 18 Q. Mr. Darrah, you've just been handed  
04:23:12 19 what's been marked, it's a monumental, huge  
04:23:20 20 document. The 1992 through 1996 Philip Morris  
04:23:26 21 U.S.A. R&D strategic plan. It is about a hundred  
04:23:28 22 pages of strategic plan and then a number of  
04:23:30 23 appendices.

04:23:34 24 A. Yes.

04:23:56 25 Q. And if you turn to page 80 of the

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24:00 2 actual strategic plan, this is the 80th page in  
04:24:00 3 here --

04:24:02 4 THE WITNESS: Excuse me for  
04:24:04 5 interrupting. I would just like to ask  
04:24:08 6 Mr. Nunley, I understand it's 1992 to 1996, but  
04:24:10 7 this contains confidential information about a  
04:24:14 8 competitive company to my company at this point  
04:24:14 9 in time.

04:24:16 10 Although this was generated some  
04:24:18 11 years back, there is a year in this time frame,  
04:24:20 12 1996, and there is a year that's going on right  
04:24:28 13 now, that I don't know if that information that's  
24:28 14 in here is something that I should be looking at  
04:24:28 15 and talking to you about.

04:24:30 16 Q. Tell you what. I'll direct  
04:24:32 17 Mr. Nunley to it, because I believe it is going  
04:24:36 18 to contain no information that is sensitive to  
04:24:40 19 the extent you've just discussed it. It is all  
04:24:42 20 highly confidential.

04:24:46 21 MR. PAYTON: And Chip, I will tell  
04:24:48 22 you what I believe is an absolutely fair  
04:24:50 23 representation of these plans. This is the 1992  
04:24:54 24 plan. They all come out as five-year  
04:24:58 25 projections, just because -- but when you look at

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:25:02 2 it, for example on page 80, you'll see there's  
04:25:04 3 nothing in there about any general projections,  
04:25:06 4 just what's happening out there.

04:25:14 5 MR. NUNLEY: I don't have a problem.

04:25:16 6 My guess is you don't want him to read the entire  
04:25:16 7 document.

04:25:18 8 MR. PAYTON: Oh, no. The section

04:25:22 9 that I want him to read is actually very brief.

04:25:26 10 I believe it is similar to and may be what is

04:25:30 11 turned into a presentation that he sees in a

04:25:32 12 different time frame.

04:25:34 13 Q. I don't believe you've seen this

:25:36 14 document; is that correct, Mr. Darrah?

04:25:36 15 A. No, I haven't.

04:25:40 16 MR. NUNLEY: Why don't you direct

04:25:42 17 him, John, if you have a specific question about

04:25:46 18 specific areas. Is 80 what you plan to ask him

04:25:46 19 about?

04:25:50 20 Q. 80, just so you can see it, begins

04:25:52 21 "New products," and I want him to go on to the

04:25:56 22 last paragraph on page 81, which I believe is the

04:26:00 23 discussion that is right along the lines of the

04:26:02 24 presentation you saw.

04:26:04 25 And if you like, there is a sort of a

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1 Darrah - Highly Confidential - Trade Secret  
2 separate pull-out version of this in the  
3 appendix, which is not much longer than this.  
4 It's strange, but the appendix is sort of the  
5 same thing, that is, sort of a separate little  
6 presentation piece.

7 MR. NUNLEY: Have you asked him,  
8 maybe I missed it, whether he has seen this  
9 before?

10 MR. PAYTON: He has not seen this  
11 before.

12 MR. NUNLEY: This is sort of the --

13 MR. PAYTON: I'm trying to see --  
14 I'll tell you why I'm asking him about this.

15 MR. NUNLEY: I was going to say, this  
16 presents to me a little of the same situation as  
17 the early document. I guess my question is, did  
18 he need to see the document to respond to your  
19 questions.

20 MR. PAYTON: I think he does.

21 Q. Mr. Darrah, the reason I want you to  
22 look at these few paragraphs, and I'm not sure  
23 you need to look any further, but there is a  
24 similar few paragraphs in the appendix, is to see  
25 if looking at those paragraphs refreshes your

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2 recollection as to the content of the  
3 presentation you saw on these various other  
4 products, nicotine containing products, the gum,  
5 the aerosol, the inhaler, the patches.

6 A. I think, as I said, I do remember we  
7 had -- included in that presentation, rather,  
8 that I was talking to you about, Mr. Payton,  
9 there was something about nicotine gum,  
10 Nicorette, there was something mentioned about an  
11 aerosol spray containing nicotine and so forth.

12 Q. Do you remember these companies? Do  
13 you see at the bottom of 81 --

14 A. Let me say that I remember the name  
15 Ciba Geigy as one.

16 Q. Marion Merrill Dow?

17 A. No, I don't remember that. Ciba  
18 Geigy is the only one I remember that comes to  
19 mind as far as these names that are on here.

20 Q. Do you see the reference to Nicorette  
21 gum actually being a success?

22 A. Let's see. Well, success from the  
23 time period of 1984 to 1988.

24 Q. Yes.

25 A. I didn't say what happened from 1988

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:28:10 2 to the time the presentation was actually  
04:28:14 3 reviewed. So I think it was, as I mentioned to  
04:28:18 4 you, sometime between 1994, '93.

04:28:18 5 My question would be what's happened  
04:28:22 6 since 1988 to the time I saw the presentation. I  
04:28:24 7 would say this is a success that they've had here  
04:28:26 8 as far as sales. I don't know, profitability,  
04:28:28 9 what's happened to the company. But they've  
04:28:32 10 increased sales, according to this data, in the  
04:28:34 11 four-year period from \$50 million to \$100  
04:28:34 12 million.

04:28:36 13 Q. You recall only being present at one  
:28:42 14 such presentation on these types of products  
04:28:44 15 being produced by these companies?

04:28:46 16 A. That's correct.

04:28:48 17 Q. Do you remember who was in the  
04:28:50 18 audience, who the presentation was made to?

04:28:54 19 A. Let me say, as I said, it was an  
04:28:56 20 operations meeting that was held in Richmond that  
04:28:58 21 we would have periodically from time to time, and  
04:29:02 22 the normal membership, if you will, of that  
04:29:06 23 meeting was Dr. Houghton, myself.

04:29:08 24 It would have been several people  
04:29:10 25 from New York. Bill Campbell as the president,

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:29:14 2 chief executive officer, Philip Morris U.S.A.,  
04:29:16 3 normally attended those meetings. Sometimes the  
04:29:18 4 head of marketing, head of sales, finance and  
04:29:20 5 accounting, human resources from New York would  
04:29:22 6 attend them.

04:29:24 7 And there would be from time to time  
04:29:26 8 representation from either one of my staff groups  
04:29:28 9 or possibly some of Dr. Houghton's staff groups.

04:29:30 10 Q. Do you know Dr. Lilly?

04:29:32 11 A. Yes, I do.

04:29:32 12 Q. Was he there?

04:29:36 13 A. I think he was. To the best of my  
:29:40 14 recollection, I think he was.

04:29:42 15 Q. And your memory is that the presenter  
04:29:42 16 was Dr. Carchman?

04:29:44 17 A. Yes, that's correct.

04:29:54 18 Q. Do you recall if any decision was  
04:29:58 19 made on the basis of the presentation?

04:30:00 20 A. My recollection is it was not a  
04:30:02 21 decision presentation. It was for information  
04:30:02 22 only.

04:30:32 23 Q. Have you ever had discussions about  
04:30:36 24 nicotine with Mr. Campbell? I guess I have to  
04:30:42 25 say President and CEO Campbell.

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04:30:46 2 A. I have not personally had specific  
04:30:48 3 discussions with Mr. Campbell about nicotine.

04:30:50 4 Q. Have you been present at  
04:30:50 5 discussions?

04:30:52 6 A. I have been present in discussions  
04:30:56 7 about nicotine and addiction of nicotine as far  
04:30:58 8 as smokers are concerned and so forth.

04:31:02 9 Q. And Mr. Campbell was present at those  
04:31:02 10 same discussions?

04:31:04 11 A. Yes, I believe he was.

04:31:08 12 Q. Place that discussion in time, if you  
04:31:08 13 can.

04:31:12 14 A. Well, it was basically the one or two  
04:31:16 15 times that I was present, it was usually in the  
04:31:18 16 context of one of our weekly staff meetings, and  
04:31:22 17 it was more of a -- let me call it a bit of an  
04:31:24 18 emotional discussion amongst those of us in our  
04:31:26 19 company.

04:31:26 20 There were no facts or no  
04:31:28 21 presentation that was made. There was no  
04:31:32 22 specific reason for having it, other than it was  
04:31:34 23 put in the context of, this is what people are  
04:31:38 24 saying now that we're doing, and we know that  
04:31:38 25 that's wrong.

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:31:40 2 And a good example would be, for  
04:31:44 3 example, to say, how can something be addictive  
04:31:46 4 in that terminology if millions of people stop  
04:31:52 5 smoking every year? Or I don't feel -- not me  
04:31:54 6 personally, but as an individual in that  
04:31:56 7 discussion, look, I've stopped smoking, or can  
04:31:58 8 stop smoking over the weekends and so on and so  
04:32:00 9 forth, and smoke more during the week or less  
04:32:04 10 during the week on an as-needed basis.

04:32:04 11 How can somebody be calling this  
04:32:08 12 particular product addictive in that way, shape  
04:32:10 13 or form? Those are, I say, the general nature of  
. :32:12 14 those types of discussions.

04:32:14 15 Q. You said the weekly staff meetings.  
04:32:14 16 What are the weekly staff meetings?

04:32:18 17 A. Mr. Campbell had his direct reports  
04:32:20 18 in New York and also in Richmond, in that case  
04:32:22 19 Dr. Houghton and myself, come to New York for a  
04:32:24 20 Monday staff meeting.

04:32:26 21 Q. Every Monday?

04:32:30 22 A. Just about every Monday, that's  
04:32:30 23 correct.

04:32:36 24 Q. And at the discussion you just  
04:32:40 25 recalled, did Dr. Houghton ever comment on any of

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04:32:46 2 the research that the research center had done on  
04:32:46 3 nicotine and whether or not it was addictive?

04:32:48 4 A. No, he did not.

04:32:52 5 Q. Did anyone ever comment on Philip

04:32:58 6 Morris research on nicotine and whether or not it  
04:32:58 7 was addictive?

04:33:00 8 A. To the best of my knowledge and

04:33:00 9 remembrance there was no comment made about  
04:33:02 10 research relative to this subject.

04:33:06 11 Q. So you and Dr. Houghton would pretty

04:33:08 12 regularly get on an airplane and fly to New York  
04:33:10 13 on Monday mornings?

04:33:10 14 A. That's correct.

04:33:16 15 Q. Do you recall flying to New York on  
04:33:20 16 the Monday morning of the Day One broadcast,

04:33:22 17 that's February 28th, and being present at a

04:33:24 18 meeting where there was a discussion about how to  
04:33:28 19 respond to the upcoming Day One broadcast?

04:33:32 20 A. I don't remember doing that,

04:33:32 21 Mr. Payton.

04:33:38 22 Q. Do you recall being present at a

04:33:42 23 meeting the next Monday, which I believe is March  
04:33:50 24 7, 1994, which meeting was held to discuss the

04:33:54 25 anticipated second Day One broadcast that

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04:33:56 2 evening, March 7?

04:33:58 3 A. I don't specifically remember that  
04:34:00 4 meeting. If we had a staff meeting in New York  
04:34:02 5 on that Monday and I was available, I probably  
04:34:04 6 went to the staff meeting. But I don't remember  
04:34:06 7 that subject being a subject that was discussed  
04:34:08 8 in the staff meeting.

04:34:26 9 Q. And did Dr. Carchman sometimes attend  
04:34:28 10 the weekly staff meetings?

04:34:30 11 A. No, he did not.

04:34:32 12 Q. The only two persons from Richmond  
04:34:34 13 that would fly would be you and Dr. Houghton?

04:34:38 14 A. Under most circumstances, yes.  
04:34:40 15 Unless there was a specific subject that we  
04:34:44 16 wanted to bring somebody with us to explain to  
04:34:44 17 the group.

04:34:48 18 Q. They would be -- because of the  
04:34:50 19 subject matter, there may be someone else added  
04:34:50 20 to the group?

04:34:52 21 A. There would be a subject matter  
04:34:54 22 expert we would want to bring along, for whatever  
04:34:54 23 the reason.

04:35:18 24 Q. Now, when you were the vice president  
04:35:24 25 in charge of production and then later the vice

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04:35:26 2 president in charge of manufacturing, that's just  
04:35:28 3 a title change, same responsibilities you had  
04:35:32 4 from '89 to '95, is that --

04:35:32 5 A. That's correct.

04:35:34 6 Q. When you were the vice president, I  
04:35:36 7 think you said that the flavor center reported to  
04:35:38 8 you.

04:35:40 9 A. The flavor center was part of my  
04:35:42 10 responsibilities. The reporting line of the  
04:35:44 11 flavor center was to the general manager of the  
04:35:46 12 processing plants.

04:35:52 13 Q. And the general manager of the  
04:36:00 14 processing plants in the -- for the last several  
04:36:06 15 years, has that been Mr. Whitman?

04:36:06 16 A. That's correct.

04:36:12 17 Q. Are you familiar with the effort  
04:36:22 18 undertaken by, first, the R&D -- the research  
04:36:24 19 center, and then later by the flavor center, to  
04:36:30 20 learn what the specific ingredients were in the  
04:36:34 21 various flavors that Philip Morris was purchasing  
04:36:36 22 from outside flavor houses?

04:36:48 23 A. What I had heard that Philip Morris  
04:36:48 24 was doing, when I came back from Europe, because  
04:36:52 25 of ingredients issues, was trying to determine

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0..:36:56 2 which ingredients were utilized in all aspects of  
04:37:00 3 prepared flavors that were prepared outside of  
04:37:02 4 our normal piece of operations.

04:37:08 5 I was not aware that the flavor  
04:37:12 6 center or the flavor facility that we have was  
04:37:16 7 actively involved in assisting R&D in that  
04:37:16 8 effort.

04:37:22 9 Q. You weren't aware that at some point  
04:37:26 10 the flavor center actually took over  
04:37:32 11 responsibility for this -- took over  
04:37:36 12 responsibility for making these findings?

04:37:38 13 A. I'm sorry. What do you mean by  
0..:37:40 14 "findings"?

04:37:42 15 Q. That at some point in the process of  
04:37:46 16 analyzing the flavors to see what the chemical  
04:37:52 17 ingredients were, the flavor center took over the  
04:37:54 18 responsibility for that project.

04:37:58 19 MR. NUNLEY: John, is that based on  
04:38:02 20 testimony or a document? Because that -- I'll  
04:38:02 21 just leave it at that.

04:38:40 22 MR. PAYTON: Yes. Yes. It is  
04:38:44 23 contained almost as I stated it in one of these  
04:38:44 24 reports.

04:38:46 25 MR. NUNLEY: May I see it?

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04:38:46 2 MR. PAYTON: This isn't the right  
04:38:48 3 one.

04:39:24 4 Q. What's the flavor center?

04:39:26 5 A. I'm sorry?

04:39:26 6 Q. What is the flavor center?

04:39:30 7 A. It is a facility where Philip Morris

04:39:36 8 prepares bulk dry flavors and bulk liquid flavors  
04:39:40 9 from various concentrates to be shipped to either

04:39:44 10 manufacturing affiliates within the U.S., outside  
04:39:48 11 the U.S., or for contract manufacturing licensee

04:39:50 12 operations outside the United States for  
04:39:52 13 utilization.

04:39:56 14 MR. PAYTON: What I have, Chip, is  
04:40:02 15 the 1992 Philip Morris U.S.A. R&D strategic  
04:40:04 16 plan. I'm going to read you two sentences, but  
04:40:04 17 I'll hand it to you.

04:40:06 18 MR. NUNLEY: You can just hand it to  
04:40:08 19 me. I'll read it.

04:40:12 20 MR. PAYTON: "Flavor suppliers."  
04:40:14 21 It's right where the flag is.

04:40:38 22 MR. NUNLEY: John, I'm sure you  
04:40:40 23 didn't mean to, but what you said is not what's  
04:40:44 24 written there. I'll tell you why, if you would  
04:40:46 25 like me to tell you.

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04:40:46 2 MR. PAYTON: I'll just ask him.

04:40:48 3 MR. NUNLEY: Well, no. What you

04:40:52 4 represented, as I understand it, John, was that,

04:40:56 5 as I understood it, the effort to determine

04:41:00 6 ingredients in flavors had initially been done by

04:41:06 7 flavor technology or R&D, and then was shifted to

04:41:06 8 the flavor center.

04:41:06 9 MR. PAYTON: Yes.

04:41:08 10 MR. NUNLEY: I don't believe that's

04:41:08 11 true. I don't think that's what the document

04:41:08 12 says.

04:41:10 13 I think what the document says is

04:41:12 14 that it was completed by R&D and then once it was

04:41:14 15 completed, the flavor center picked it up and

04:41:18 16 just checked incoming flavors for ingredients. I

04:41:20 17 don't believe the flavor center was involved in

04:41:24 18 doing analytical testing for the purpose of

04:41:28 19 determining ingredients in flavors.

04:41:30 20 I think they did analytical testing

04:41:32 21 to meet specs, but not for making determinations

04:41:36 22 of ingredients in flavors.

04:41:52 23 MR. PAYTON: Okay. Let me just read

04:41:54 24 the three sentences. You may be right. I think

04:42:00 25 it's subject to that -- it's not clear to me.

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:42:02 2 Q. I'm reading one little paragraph,  
04:42:06 3 Mr. Darrah. "Flavor suppliers. Objectives of  
04:42:06 4 the flavor specification group have been  
04:42:10 5 completed. During the last several years over  
04:42:12 6 600 flavor formulations have been thoroughly  
04:42:14 7 analyzed and specifications have been  
04:42:16 8 established.

04:42:18 9 "All flavors currently in use meet  
04:42:20 10 German food law regulations. The responsibility  
04:42:22 11 for analysis of current flavors has been shifted  
04:42:26 12 from R&D to the flavor center. R&D will  
04:42:28 13 continue, however, to analyze and establish  
:42:32 14 specifications for new flavors."

04:42:34 15 Q. Were you aware of that? Do you  
04:42:34 16 understand that?

04:42:36 17 A. Yes, I understand that, and I  
04:42:38 18 understand what the background of that was.

04:42:38 19 Q. Okay. Go ahead.

04:42:42 20 A. The shipment of flavors to Philip  
04:42:46 21 Morris Germany required us to issue a certificate  
04:42:48 22 that those flavors conform to the German food  
04:42:56 23 law. This is a requirement that our German  
04:42:58 24 Philip Morris businesspeople in Munich required.

04:43:02 25 Up until that point, because of the

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04:43:04 2 fact that we did not know, I do not believe, all  
04:43:06 3 the ingredients that were in flavors, that  
04:43:10 4 certificate was issued by our R&D organization,  
04:43:12 5 although the flavors were manufactured, if you  
04:43:16 6 will, assembled and shipped from the flavor  
04:43:18 7 center itself.

04:43:20 8 I believe, Mr. Payton, what that's  
04:43:22 9 referring to is that at the point in time that  
04:43:24 10 the ingredients work had been done with the  
04:43:26 11 suppliers through R&D, then the certificate  
04:43:34 12 issuance to the Philip Morris GMBH in Germany no  
04:43:36 13 longer came from the R&D facility. It came from  
04:43:38 14 the flavor center.

04:43:42 15 Q. Mr. Darrah, do you understand there  
04:43:44 16 may have been two different investigations in  
04:43:48 17 place, one to find out the specifications for all  
04:43:50 18 flavors, and the other to see if the German  
04:43:52 19 food -- I forgot what it is, food law  
04:43:54 20 regulations, had been satisfied?

04:43:56 21 A. The one that I was familiar with,  
04:43:58 22 obviously --

04:44:00 23 Q. Was the German food law?

04:44:02 24 A. The German food law, and that

04:44:04 25 relationship with issuing certificates from the

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04:44:06 2 flavor center and not from R&D.

04:44:12 3 Q. Were you aware of the other, I think,  
04:44:12 4 larger project, which is for Philip Morris  
04:44:18 5 U.S.A., to determine the specifications of all of  
04:44:20 6 the flavors it used?

04:44:26 7 A. At what time was this we were  
04:44:26 8 referring to?

04:44:28 9 Q. I can tell you that I believe the  
04:44:32 10 initial project was begun at the end of '86 or in  
04:44:34 11 1987.

04:44:36 12 I'm looking at another document. And  
04:44:36 13 I believe it took longer than originally  
04:44:40 14 anticipated, so it wasn't completed until like  
04:44:40 15 1991.

04:44:42 16 A. So the time frame we're saying is  
04:44:46 17 between late '89 and 1991, was I aware of the  
04:44:50 18 ingredients identification program from R&D?

04:44:50 19 Q. Yes.

04:44:50 20 A. No, I was not.

21 (Continued on the next page.)

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04:45:20 2 THE VIDEO OPERATOR: We're going off  
04:45:26 3 the record. The time on the screen is 4:45:25.  
04:46:42 4 (Time noted: 4:45 p.m.)

5  
6  
7 STEPHEN C. DARRAH  
8

9 Subscribed and sworn to before me  
10 this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

11  
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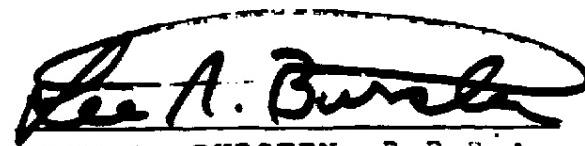
2 C E R T I F I C A T E

3 I, LEE A. BURSTEN, a Registered  
4 Professional Reporter and Notary Public within  
5 and for the Commonwealth of Virginia, do hereby  
6 certify:

7 That STEPHEN C. DARRAH, the witness  
8 whose deposition is hereinbefore set forth, was  
9 duly sworn by me and that such deposition is a  
10 true record of the testimony given by the  
11 witness.

12 I further certify that I am not  
13 related to any of the parties to this action by  
14 blood or marriage, and that I am in no way  
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 17<sup>th</sup> day of July, 1995.

18  
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LEE A. BURSTEN, R.P.R.

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3 E X H I B I T S

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18	( <b>Darrah Exhibit 8</b> for identification, Philip Morris interoffice correspondence from A. Dixon to S. Darrah dated January 21, 1991.) .....	134 6
21	( <b>Darrah Exhibit 9</b> for identification, one-page Philip Morris interoffice correspondence from A. Dixon to Mr. Darrah dated January 23, 1991.) .....	137 7
24	( <b>Darrah Exhibit 10</b> for identification, Philip Morris interoffice correspondence from J. E. Bickett and S. M. Hayward to N. O. Fowler, R. A. Lively, D. Milby and W. R. Moore.) .....	143 11

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3	( <b>Darrah Exhibit 11</b> for identification, Philip Morris Incorporated's answers to American Broadcasting Companies' first set of interrogatories.).....	153 10
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